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Ontario

Legislative Assembly

Miscellaneous publications

STANDING STATUTORY INSTRUMENTS COMMITTEE

SECOND REPORT • NOVEMBER 1979

DEPOSITORY LIBRARY MATERIAL

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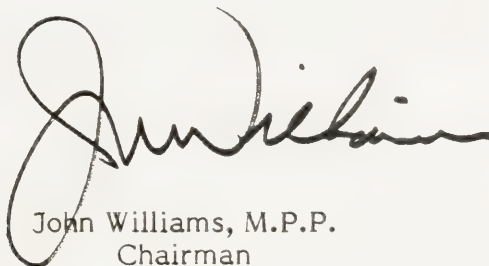
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LETTER OF TRANSMITTAL

The Honourable John E. Stokes, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Statutory Instruments has the honour to present its Second Report and commends it to the House.

A handwritten signature in black ink, appearing to read 'John Williams', with a large, stylized initial 'J'.

John Williams, M.P.P.
Chairman

Queen's Park
8 November 1979

MEMBERSHIP OF COMMITTEE

SAM CUREATZ
MICHAEL DAVISON
JOHN EAKINS
BRUCE MCCAFFREY

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JOHN R. WILLIAMS

LACHLAN R. MACTAVISH, Q.C.
Counsel to the Committee

A. SMIRLE FORSYTH
Clerk of the Committee

ORDER OF REFERENCE

Extract from the Votes and Proceedings of the Legislative Assembly of Ontario, Thursday, 8 March 1979:

On motion by Mr. Welch,

Ordered - That, the following Standing Committees be established for this Session, with power to examine and enquire into such matters as may be referred to them by the House, with power to send for persons, papers and things, as provided in Section 35 of The Legislative Assembly Act:-

The Standing Statutory Instruments Committee is appointed for this session to be the committee provided for by Section 12 of The Regulations Act, and has the terms of reference as set out in that section, and the said Committee, in addition to those powers, shall review and consider:

1. The role of the Committee with particular reference to the recommendations of the Select Committee on the Fourth and Fifth Reports of the Ontario Commission on the Legislature, and the practices of the Parliaments of Canada and the United Kingdom,

and

2. The establishment of guidelines to be observed in the delegation by statutes of power to make Statutory Instruments and the use made of such delegated power.

The said Committee is to report its recommendations to the House and in addition to the normal power of Standing Committees to send for persons, papers and things, it shall have power to employ counsel and such other staff as the Committee considers necessary.

For convenience, section 12 of The Regulations Act referred to above is reproduced on page iv.

12.(1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

(2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.

(5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

CHAPTER 1

INTRODUCTION

This is the fourth report from this Committee and its predecessor in the past two years.

This report has two substantive parts. The first contains your Committee's comments on our examination of the regulations filed and published pursuant to The Regulations Act during the period 1 January to 30 September, 1979.

The second, for reasons that will be explained later, contains in summarized form the recommendations of the first three reports, plus those now made for the first time with respect to the 1979 regulations reported on in this Report.

Perhaps it would be well to mention here that we have welcomed a number of comments from Ministers and other officials of the Government. For the most part, these have been congratulatory and express thanks to the Committee for bringing fresh points of view to their attention. In a few instances, however, disagreement with our opinions has been registered. This we also welcome. In a field of operation as complex and legalistic as that of this Committee it is inevitable that opinions will differ occasionally. In spite of this fact, we submit our recommendations to the House with confidence that their implementation will effect improvement in the processing of regulations of a legislative nature.

CHAPTER II

1979 REGULATIONS

General

During the period from 1 January to 30 September, 1979, there were a total of 660 regulations filed and published pursuant to the requirements of The Regulations Act. All of these have been examined in detail by our Counsel on our behalf. They occupy 2,191 pages of The Ontario Gazette.

These regulations may be divided into three types: new, amending and revoking. The ratio of new regulations to amending regulations is approximately one of the former to five of the latter. The third type, regulations that revoke earlier regulations are relatively few in number; there were only some sixteen of them in the period under review.

The 660 regulations filed in the first nine months of 1979 were made under the authority of 131 different Acts. The Act that spawned the greatest number was The Planning Act, which produced 124. The Highway Traffic Act followed with 54; The Parkway Belt Planning and Development Act, 1973 with 41; The Farm Products Marketing Act with 31; The Health Insurance Act with 22; The Milk Act with 17; The Crop Insurance Act (Ontario) with 16; The Game and Fish Act with 13; and The Public Transportation and Highway Improvement Act with 11. All the others generated fewer than 10 each.

In the review of the 1979 Regulations, your Committee has found only fifteen upon which we wish to comment. In the three years the Committee has monitored the regulations, we have noted an improvement in their quality. We commend those involved with the regulation-making process for their efforts to ensure careful and correct drafting of regulations within both the legislative framework and the guidelines which your Committee has recommended.

Unnecessary Procedures

The procedures of The Planning Act, The Parkway Belt Planning and Development Act, 1973, and The Highway Traffic Act, among others, have been the subject of comment and criticism in earlier reports of this Committee and its predecessors. See Second Report: December 1978 at page 13 and First Report: June 1979 at pages 2, 7 and 16, respectively.

We now endorse and emphasize the recommendations set out in those reports and summarized later in this Report (see pages 13-15 of this Report).

Regulations Made Without Authority

Eight of the 1979 Regulations upon which your Committee wishes to comment and question their validity are:

1. O. Reg. 118/79. The Highway Traffic Act.
2. O. Reg. 146/79. The Highway Traffic Act.

(Ministry of Transportation and Communications)

These two regulations purport to have been made under the authority of section 75(2) of The Highway Traffic Act as re-enacted by S.O. 1977, c.65, s. 3 and amended by S.O. 1978, c. 90, s. 6. Each regulation designates the termination date of a "freeze-up" period.

The statutory authorization for the making of regulations with respect to "freeze-ups" was the subject of comment at page 41 of our predecessor's First Report: June 1978.

Although the criticism has been remedied in part by the 1978 amendment mentioned above, your Committee is still in doubt as to whether the Legislature intended the authorization to be disjunctive or whether the intention was to have the commencement date, determination date and the part of the Province to which the designation applied, in one regulation or "package".

Obviously the officials in the Ministry and in the Office of the Registrar of Regulations view the provision as disjunctive. Nevertheless, your Committee is of the opinion that sufficient doubt exists to warrant a clarification of the statutory authority in question.

3. O. Reg. 192/79. The Public Commercial Vehicles Act.
(Ministry of Transportation and Communications)

This regulation purports to have extended the life of public commercial vehicle licences due to expire on 31 March 1979 for a period of one month to 30 April 1979.

Your Committee is of the opinion that the authority for making such an extension by way of a regulation is questionable.

A similar extension was made a year ago by O. Reg. 240/78 upon which we commented at page 25 of our First Report: June 1979. For convenience, we repeat our criticism which applies with equal force to the regulation now under review:

"There is no authority to make this extension unless section 18(a) or (s) of The Public Commercial Vehicles Act or section 27(g) of The Interpretation Act can be relied upon. In fact, a contrary intent may be taken from section 12a(2) of the Act as enacted by section 71(6) of The Civil Rights Statute Law Amendment Act, 1971."

4. O. Reg. 349/79. The Charitable Institutions Act.
5. O. Reg. 350/79. The Homes for Retarded Persons Act.
(Ministry of Community and Social Services)

These two Acts and their respective regulations have many features in common. A prerequisite of becoming a charitable institution or a home for retarded persons, as the case may be, is that the body operating the institution or home be a corporation.

Each of these two regulations contains a provision stating that the fiscal year of a corporation (presumably a corporation approved for the purposes of the Act) is the period designated by the Minister in charge of the administration of the respective Acts and regulations.

Your Committee has been unable to find any power in the Lieutenant Governor in Council to make such a designation himself, let alone delegate such a power to the Minister.

Normally corporations fix their fiscal years by by-law; we can find nothing in the legislation that would interfere with this procedure.

6. O. Reg. 351/79. The Vocational Rehabilitation Services Act.
(Ministry of Community and Social Services)

The situation here is somewhat similar to that discussed above with respect to O. Reg. 349/79 and O. Reg. 350/79 except that your Committee believes this regulation to be more questionable.

This regulation amends the principle regulation by adding a definition which reads:

"(da) "fiscal year" of a corporation means the period designated by the Minister as the fiscal year of the corporation;"

Nowhere in either the Act or the regulation is a corporation mentioned. Furthermore, "fiscal year" is not mentioned elsewhere in either the Act or the regulation.

If this provision is intended to give the Minister power to designate fiscal periods, it fails, in the opinion of your Committee, on three grounds: first, the language relied on is purely descriptive; second, the Lieutenant Governor in Council has not been given power by the Act or otherwise to designate the fiscal year; and third, the Lieutenant Governor in Council has no power to delegate to the Minister the power to designate the fiscal year; one cannot delegate what one does not have.

7. O. Reg. 380/79. The Day Nurseries Act, 1978.
8. O. Reg. 381/79. The Children's Mental Health Services Act, 1978.
(Ministry of Community and Social Services)

These two regulations are somewhat similar to those above in which we discussed the problems connected with the designation of the fiscal year of a corporation (see page 5).

Each of these two regulations adds a new section to its principal regulation stating:

"The fiscal year of an approved corporation is the period designated by the Minister as the fiscal year of the approved corporation."

Your Committee, for the same reasons as are discussed above in connection with O. Reg. 349/79, O. Reg. 350/79 and O. Reg. 351/79, is of the opinion that there is no appropriate authority for the making of the provision quoted.

Regulations Made Retroactive Without Authority

Seven of the regulations which your Committee feels it must draw to the attention of the House are regulations which have been given retroactive effect without any apparent authority for so doing.

While it is true that some of the periods of retroactivity are only of a few days duration and may be said to be in the public interest and affect no one's rights adversely, we nevertheless feel that a principle of importance is involved and that the failure to observe the principle is a breach of the law. Your Committee is of the opinion that where such steps are considered to be necessary, the retroactivity should be validated by statute at the earliest possible moment. We again note that this has been done on occasion in the past (see page 48, First Report: June 1978).

This Committee's predecessor, in Chapter IX, pages 32 to 38, of its First Report: June 1978, examined fully the law with respect to retroactivity and there is no need to repeat it here. Suffice it to record that we endorse and emphasize the comments made at that time (see item 6 of this Report on page 12).

The seven regulations in this category, where we can find no authority for their retroactive aspects, are as follows:

1. O. Reg. 220/79. The Elevators and Lifts Act.

(Ministry of Consumer and Commercial Relations)

Made 28 March 1979; Filed 6 April 1979; In force 1 April 1979.

2. O. Reg. 221/79. The Boilers and Pressure Vessels Act.
(Ministry of Consumer and Commercial Relations)
Made 28 March 1979; Filed 6 April 1979; In force 1 April 1979.
3. O. Reg. 279/79. The Liquor Licence Act, 1975.
(Ministry of Consumer and Commercial Relations)
Made 25 April 1979; Filed 2 May 1979; In force 30 April 1979.
4. O. Reg. 284/79. The Vocational Rehabilitation Services Act.
(Ministry of Community and Social Services)
Made 2 May 1979; Filed 7 May 1979; In force 1 January 1979.
5. O. Reg. 369/79. The Homes for Retarded Persons Act.
(Ministry of Community and Social Services)
Made 23 May 1979; Filed 30 May 1979; In force 11 May 1979.
6. O. Reg. 421/79, s.l. The Motor Vehicle Fuel Tax Act.
(Ministry of Revenue)
Made 30 May 1979; Filed 12 June 1979; In force 11 April 1979.
7. O. Reg. 519/79. The Children's Institutions Act, 1978.
(Ministry of Community and Social Services)
Made 4 July 1979; Filed 11 July 1979; In force 1 July 1979.

CHAPTER III

GUIDELINES

One of the keystones of the work of this Committee and its predecessor has been our study of this particular matter. (See First Report: June 1978 at page 10).

Owing to the limited circulation of that report and the importance of the guidelines to everyone involved in the preparation, processing and examination of regulations, we consider that it is advisable to meet the requests we have received and to quote from our earlier report on this subject.

"The second specific term of reference in the Order of the House of 6 March 1978 directed this Committee to review and consider...the establishment of guidelines to be observed in the delegation by statutes of power to make Statutory Instruments and the use made of such delegated power.

"In its consideration of this matter the Committee has studied the practices in this respect of the following jurisdictions: Australia (1931); United Kingdom (Donoughmore Committee 1932) and the Select Committee on Statutory Rules and Orders (1944); South Africa (1949); India (1952); Manitoba (1960); Canada (1974 and 1978).

"Coming closer to home, we find that in the Report of the Royal Commission Enquiring into Civil Rights (the Honourable J. C. McRuer, Chairman), Report No. 1, Volume No. 1, commencing at Page 369, an entire chapter was devoted to the "Review of Subordinate Legislation by the Legislature". The fourth of his recommendations on this subject (page 378) is very much in point; it recommends that in Ontario the following principles should guide any review committee in its examination of regulations:" (These are set out on pages 11 and 12 of this Report).

"After studying and comparing the criteria adopted by the six jurisdictions mentioned above as well as the guidelines recommended by the former Chief Justice of the High Court, Mr. McRuer, we have come to the conclusion that we cannot do better than to endorse in toto his recommendations and we do so."

CHAPTER IV

RECOMMENDATIONS: 1978-1979

The three earlier reports of this Committee and its predecessor are now out of print and as a convenience to those interested, we are setting out here in summarized form our recommendations to date with a footnote reference to the source.

Your Committee recommends that:

1. The following guidelines should be employed in the preparation and examination of regulations:

- (a) The regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) The regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) The regulations should be expressed in precise and unambiguous language.
- (d) The regulations should not have retrospective effect unless clearly authorized by statute.
- (e) The regulations should not exclude the jurisdiction of the courts.
- (f) The regulations should not impose a fine, imprisonment or other penalty.
- (g) The regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) The regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence, fee, or the like).

- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.
- 2(a) As a general rule, the authority of the Lieutenant Governor in Council to make, approve or veto regulations should be unencumbered.
- (b) The authority of any other person or body to make regulations should be subject to the approval, or right of veto, of the Lieutenant Governor in Council.

First Report: June 1978, Page 16.

- 3. Key words and expressions used in an Act, should, if they require definition, be defined in the Act, not in the regulations.

First Report: June 1978, Page 20.

- 4. The authority to impose penalties for infractions of an Act or the regulations under the Act, and the sanctions for such infractions, should be in the Act, not in the regulations.

First Report: June 1978, Page 21.

First Report: June 1979, Page 29.

- 5. All exemptions from The Regulations Act that are not now set out in the Act should be transferred to the Act.

First Report: June 1978, Page 29.

- 6(a) Express authority for giving a regulation retroactive effect should be in the Act.

- (b) Such an authorizing provision should specify a date back of which the retroactivity must not go.

First Report: June 1978, page 38.

- 7. Reliance should not be put upon descriptive language as authority for taking action or making a regulation. Specific authority for so doing should be provided.

First Report: June 1978, Page 44.

First Report: June 1979, Page 30.

- 8. Powers, as distinct from duties, of a public body or official should be set out in the Act and not left to be prescribed in the regulations.

First Report: June 1978; Page 45.

- 9. The use of the expression "rules and regulations" in the sense in which it is used in The Small Claims Court Act should be discontinued.

First Report: June 1978, Page 46.

10. The authority to make regulations creating exemptions from an Act should be used only where and to the extent necessary.

First Report: June 1978, Page 47.

11. Every Act which authorizes the making of regulations should state whether they are or are not to come within the scope of The Regulations Act.

First Report: June 1978, Page 47.

12. The Regulations Act and Regulation 781 of R.R.O. 1970 made under the Act should be reviewed and updated.

First Report: June 1978, Page 50.

13. Every ministry, agency of the Government, and other body administering regulations, should examine their current regulations with a view to updating them, simplifying them in substance and in form, and removing obsolete provisions.

First Report: June 1978, Page 51.

14. The manner in which compound references in the regulations (and in the statutes) are expressed should be simplified by the adoption of a style that can be more readily comprehended.

First Report: June 1978, Page 53.

15. The Planning Act

- (a) A study should be undertaken as part of the programme flowing from the White Paper on The Planning Act with a view to exempting from The Regulations Act all regulations made under The Planning Act after an appropriate date, and to consider the elimination of at least one of the other three systems now in operation, namely those in the Ministry, in municipal offices, and in Land Registry offices.

First Report: June 1979, Page 5;
This Report: Page 3.

- (b) Remedial legislative action should be taken at once to keep alive all Regulations made under The Planning Act before the cut-off date of the proposed revision of the Regulations and also to authorize the exclusion of them from the revision.

First Report: June 1979, Page 6.

16. The Parkway Belt Planning and Development Act, 1973

- (a) The Ministry of Treasury and Economics should undertake a study of the systems dealing with the regulations made under The Parkway Belt Planning and Development Act, 1973, with the view of exempting them from The Regulations Act and continuing and perhaps strengthening the systems now in place in the Ministry and at the municipal level.

First Report: June 1979, Page 9;
This Report: Page 3.

- (b) Remedial legislative action should be taken at once to keep in force all regulations made under this Act before the cut-off date of the general revision of all regulations now being planned and to authorize the exclusion of them from the revision.

First Report: June 1979, Page 9.

17. The Public Transportation and Highway Improvement Act

Legislation should be enacted to exempt designations of controlled-access highways from The Regulations Act as is now the case with The King's Highway designations, thus bringing the two procedures into line.

First Report: June 1979, Page 15.

18. The Highway Traffic Act

- (a) Construction zones should be exempted from The Regulations Act and dealt with by way of administrative orders in the Ministry of Transportation and Communications.

First Report: June 1979, Page 16;
This Report: Page 3.

- (b) The authority to prescribe rates of speed on The King's Highway should be transferred from the Lieutenant Governor in Council to the Minister of Transportation and Communications and the regulations made thereafter should be exempted from The Regulations Act. Regulations of this kind heretofore made should be exempted by legislation from inclusion in the upcoming general revision of the regulations.

First Report: June 1979, Page 17.

- (c) Similar steps be taken with respect to parking under section 116(3) of the Act.

First Report: June 1979, Page 18.

- (d) Jurisdiction over other matters, such as stop signs at intersections of The King's Highway, should be examined with a view to transferring jurisdiction from the Lieutenant Governor in Council to the Minister to prescribe by way of executive order and to exempting them from the provisions of The Regulations Act. The Ministry of Transportation and Communications should examine such matters with a view to the establishment of more efficient administrative practices.

First Report: June 1979, Page 18.

19. The Environmental Assessment Act, 1975

- (a) The present two alternative methods of making exemptions from The Environmental Assessment Act, 1975, i.e. under sections 30 and 41(f), are redundant and ill advised. The Ministry of the Environment should study the situation and decide upon one or the other and in any event make it perfectly clear whether or not The Regulations Act applies.

First Report: June 1979, Page 22.

- (b) The validity of the exemption orders made by the Minister of the Environment under section 30 of The Environmental Assessment Act, 1975 is questionable. Steps should be taken legislatively to put their validity beyond doubt.

First Report: June 1979, Page 21.

CHAPTER V

CONCLUSION

In addition to the recommendations set out in chapter IV of this Report, your Committee is of the opinion that the Ministries concerned should examine the 1977, 1978, and 1979 regulations that have been the subject of comment and criticism in chapter X of the First Report: June 1978 at pages 39 to 47, in chapter VIII of the First Report: June 1979 at pages 23 to 31, and in chapter II of this Report at pages 2 to 9, respectively, with a view to taking whatever remedial action they feel is appropriate in the circumstances.

For convenience of reference, the regulations in question are (listed numerically by year):

<u>1977</u>	O. Reg. 33/77.	<u>The Endangered Species Act.</u>
	O. Reg. 115/77.	<u>The Highway Traffic Act.</u>
	O. Reg. 128/77.	<u>The Highway Traffic Act.</u>
	O. Reg. 305/77.	<u>The Guarantee Companies Securities Act.</u>
	O. Reg. 526/77.	<u>The Ministry of Community and Social Services Amendment Act, 1974.</u>
 <u>1978</u>	 O. Reg. 240/78.	 <u>The Public Commercial Vehicles Act.</u>
	O. Reg. 255/78.	<u>The Regional Municipality of Peel Act.</u>
	O. Reg. 452/78.	<u>The Regional Municipality of Waterloo Act, 1972.</u>
	O. Reg. 625/78.	<u>The Family Benefits Act.</u>
	O. Reg. 750/78.	<u>The Mental Health Act.</u>
	O. Reg. 779/78.	<u>The Teachers Superannuation Act.</u>
	O. Reg. 796/78.	<u>The Mental Health Act.</u>
	O. Reg. 941/78.	<u>The Highway Traffic Act.</u>
	O. Reg. 943/78.	<u>The Coroners Act.</u>
	O. Reg. 967/78.	<u>The Highway Traffic Act.</u>
 <u>1979</u>	 O. Reg. 118/79.	 <u>The Highway Traffic Act.</u>
	O. Reg. 146/79.	<u>The Highway Traffic Act.</u>
	O. Reg. 192/79.	<u>The Public Commercial Vehicles Act.</u>
	O. Reg. 220/79.	<u>The Elevators and Lifts Act.</u>
	O. Reg. 221/79.	<u>The Boilers and Pressure Vessels Act.</u>
	O. Reg. 279/79.	<u>The Liquor Licence Act, 1975.</u>
	O. Reg. 284/79.	<u>The Vocational Rehabilitation Services Act.</u>
	O. Reg. 349/79.	<u>The Charitable Institutions Act.</u>
	O. Reg. 350/79.	<u>The Homes for Retarded Persons Act.</u>
	O. Reg. 351/79.	<u>The Vocational Rehabilitation Services Act.</u>
	O. Reg. 369/79.	<u>The Homes for Retarded Persons Act.</u>
	O. Reg. 380/79.	<u>The Day Nurseries Act, 1978.</u>

O. Reg. 381/79.	<u>The Children's Mental Health Services Act, 1978.</u>
O. Reg. 421/79.	<u>The Motor Vehicle Fuel Tax Act.</u>
O. Reg. 519/79.	<u>The Children's Institutions Act, 1978.</u>

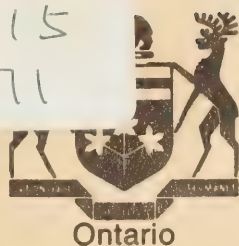
Once again your Committee wishes to state its appreciation of our Counsel, Lachlan R. MacTavish, Q.C., and of our Clerk, Smirle Forsyth, for their detailed and careful work undertaken during this Session.

In conclusion, your Committee wishes to emphasize that its basic function is to examine on an on-going basis the regulations to ensure that the legislation made by executive action is truly subordinate legislation and is within the scope of the particular legislative powers which the Legislature has delegated.

We will, so far as we are able, continue to assist in ensuring that delegated powers are not abused and that such powers are exercised in accordance with the intent and purpose of the Legislature. This is the function entrusted to this Committee in section 12 of The Regulations Act.

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Government
Publications



STANDING COMMITTEE ON REGULATIONS AND OTHER STATUTORY INSTRUMENTS

FIRST REPORT • 1980

4th Session 31st Parliament
29 Elizabeth II

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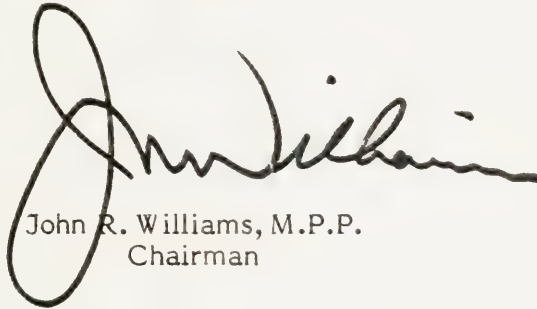


LETTER OF TRANSMITTAL

The Honourable John E. Stokes, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Regulations and Other Statutory Instruments has
the honour to present its First Report and commends it to the House.

A handwritten signature in black ink, appearing to read 'John Williams', with a large, stylized initial 'J'.

John R. Williams, M.P.P.
Chairman

Queen's Park
5 June 1980

Page 8

Second paragraph, second line should read:

"pages 43-45 and the First Report 1979 at page 30), the practice is much too"

Page 8

O.Reg. 703/79. The Corporation Securities Registration Act
Registration Act.

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ORDER OF REFERENCE

Extract from the Votes and Proceedings of the Legislative Assembly of Ontario, Friday, 14 March 1980:

On motion by Mr. Wells, seconded by Mr. Miller (Muskoka),

Ordered - That the following Standing Committee be established for this Session, with power to examine and enquire into such matters as may be referred to it by the House, with power to send for persons, papers and things, as provided in Section 35 of The Legislative Assembly Act:

The Standing Committee on Regulations and Other Statutory Instruments is appointed for this Session to be the committee provided for by section 12 of The Regulations Act, and has the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (a) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) Regulations should be expressed in precise and unambiguous language.
- (d) Regulations should not have retrospective effect unless clearly authorized by statute.
- (e) Regulations should not exclude the jurisdiction of the courts.
- (f) Regulations should not impose a fine, imprisonment or other penalty.
- (g) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like).
- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

And that the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of The Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

And that the Committee shall have the power to employ counsel and such other staff as it considers necessary.

Extract from THE REGULATIONS ACT, R.S.O., 1970, c. 410:

12.(1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

(2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.

(5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

CHAPTER 1

INTRODUCTION

This is the first report of the present Committee and the fifth of a series. This report was preceded by the four reports of its two predecessors: June 1978, November 1978, June 1979, and November 1979.

This Committee was constituted by Order of the House on 14 March 1980.

An organization meeting was held on 27 March 1980 at which the Clerk of the Committee, Mr. Smirle Forsyth, presided until the Chairman, Mr. Williams, was elected and assumed office. Mr. McKessock was then duly nominated and elected as Vice-Chairman.

Lachlan R. MacTavish, Q.C., formerly Senior Legislative Counsel for Ontario and counsel to the three immediate predecessors of this Committee, was appointed Counsel to the Committee.

Counsel was instructed to complete his detailed examination of the 1979 Regulations and to report to the Committee thereon. Mr. MacTavish was also instructed to proceed with the examination of the 1980 Regulations and to report his findings thereon from time to time.

The detailed examination of the regulations is, of course, the primary responsibility of this Committee. It is imposed by section 12 of The Regulations Act which must of necessity be carried out on our behalf by Counsel.

The Regulations Act requires the Committee to report to the House from time to time its observations, opinions and recommendations with respect to the regulations, all of which stand permanently referred to the Committee. This report covers the regulations filed in the fourth quarter of 1979. The first three-quarters of 1979 were reported upon in November 1979.

The House, under the new Terms of Reference of the Committee, has directed that before the Committee may draw a regulation or other statutory instrument to the attention of the House, the ministry responsible for the regulation must be afforded an opportunity to make an explanation. This requirement is similar to one now in force in the Parliament at Westminster.

Your Committee welcomes this additional direction from the House. In an area as complex and legalistic as that of delegated legislation, it is inevitable that opinions will, on occasion, differ. The new procedure will help to ensure that our criticisms are fair and our conclusions sound; it has been followed with benefit to the ministries concerned and to the Committee.

CHAPTER II

STATISTICS: 1979 REGULATIONS

During the calendar year 1979 a total of 962 regulations were filed under The Regulations Act. This compares with 1,007 in 1978 and 975 in 1977.

These regulations occupy 2,568 pages of The Ontario Gazette as compared with 1,965 pages in 1978 and 1,797 pages in 1977 - a substantial increase in volume.

The 1979 Regulations can be divided into three basic categories - principle, amending, and revoking. The results show that the ratio of one group to another over the year is approximately the same as it was in 1978 and 1977. The largest category by far is the group that amend principle regulations, some 728. Principle (new) regulations total 215, followed by 19 in the revoking category.

Looking at this analysis from another viewpoint, the 962 regulations filed in 1979 were made under the authority of some 159 acts. This compares with 150 acts in 1978 and 138 in 1977.

By a very considerable margin, the largest number of regulations were made under the authority of one act, namely The Planning Act. This feature has been the subject of comment in earlier reports (see Second Report 1978, page 13; First Report 1979, pages 2-6).

The table on page 4 shows graphically the 1979 record compared with those of 1978 and 1977.

TABLE

ACT

NUMBER OF REGULATIONS FILED

	<u>1979</u>	<u>1978</u>	<u>1977</u>
Planning Act	208	263	309
Highway Traffic Act	92	88	79
Parkway Belt Planning and Development Act	56	67	57
Farm Products Marketing Act	37	18	13
Health Insurance Act	34	31	25
Game and Fish Act	25	23	17
Milk Act	22	41	24
Education Act	20	24	11
Public Transportation and Highway Improvement Act	17	19	17
Crop Insurance Act (Ontario)	18	37	37
Public Health Act	15	14	13
Public Hospitals Act	12	11	7

NOTE: In 1979, fewer than ten regulations were filed under each of the remaining 147 Acts.

CHAPTER III

O.REG. 661/79 to O.REG. 962/79

General

The Second Report of last year reported upon the regulations filed and published in 1979 up to the end of September of that year (pages 2 to 9 of that Report). We now report upon the regulations filed in the fourth quarter of 1979.

Of the 301 regulations in that group, the Committee has found only eight that need to be brought to the attention of the House.

These we have drawn to the attention of the ministry responsible as required by our Order of Reference.

Before commencing a detailed consideration of the eight regulations that we feel it is our duty to report to the House, we must point out that we consider eight out of 301 to be a remarkably good result that speaks well of the abilities and skills of those who are responsible for the preparation and processing of regulations. This is particularly true when it is realized that in some cases genuine differences of opinion exist. However, the Committee believes that where doubt exists, remedial action should be taken to remove all argument.

Regulations Made Without Statutory Authority

O.Reg. 770/79. The Ministry of Culture and Recreation Act, 1974

This Act, as amended by S.O. 1975, c. 18, s. 1, contains ample authority for the Lieutenant Governor in Council to make this regulation which enacts

provisions governing municipal recreation directors' certificates. However, the regulation was not made by the Lieutenant Governor in Council; it was made by the Minister of Culture and Recreation.

This oversight may be classed as a technical irregularity that is perhaps cured by the fact that the regulation was approved by the Lieutenant Governor in Council. Nevertheless, the Committee feels duty bound to report this incident to the House. It is not, in our opinion, a matter for remedial action of any kind.

O.Reg. 863/79. The Conservation Authorities Act

This regulation fixes the fees to be charged for the rental of the Interpretative Centres in the Foley Mountain Conservation Area and in the Baxter Conservation Area of the Rideau Valley Conservation Authority. There is ample authority for this.

However, subsection 20(3), as remade, goes further than fees. It provides for deposits in certain cases. Your Committee can find no authority for this. Furthermore, the subsection is, in our opinion, vague in that it is silent as to when and under what circumstances the "deposit" is returnable to the depositor.

The Ministry of Natural Resources concedes that little authority can be found in the Act for legislating upon the subject of deposits and that remedial action is being taken.

O.Reg. 911/79. The Highway Traffic Act
O.Reg. 948/79. The Highway Traffic Act

These two regulations were made under the supposed authority of subsection 75(2) of the Act. They designate commencement dates on and after which freeze-up allowances are authorized in defined parts of Ontario.

This is another example of a practice that was commented upon in the First Report 1978 at pages 41 and 42 and in the Second Report 1979 at pages 3 and 4.

The Committee believes that sufficient doubt exists as to the sufficiency of the statutory authority to make these regulations to require the authority to be clarified.

However, the Committee must point out that the legal officers in the Ministry of Transportation and Communications and in the Office of the Registrar of Regulations take the view that the Act contains adequate authority for the making of these regulations. We respect their opinion and concede that they may be right, but we hasten to repeat our view that the matter ought to be put beyond argument.

This may be an appropriate place in this report to state how gratified the Committee is to learn from the Minister of Transportation and Communications, the Honourable James Snow, that he has two bills in the House that implement a number of our recommendations in previous reports.

For example, recommendation 17 of the Second Report 1979 suggested that controlled access highway designations be exempted from The Regulations Act. This has now been done by section 4 of The Public Transportation and Highway Improvement Amendment Act, 1980.

Recommendation 18(a) of the same Report recommended that the designation of construction speed zones also be exempted from The Regulations Act. This is provided for in section 14 of Bill 65.

The next recommendation, 18(b), respecting speed limits on the King's Highway is also being implemented in section 14 of Bill 65.

A corollary amendment will simplify the fixing of speed limits on highways in territory without municipal organization.

In addition, Mr. Snow has drawn our attention to a criticism of O.Reg. 192/79 (Second Report 1979, pages 4 and 5). This regulation under The Public

Commercial Vehicles Act purports to have extended the life of public commercial vehicle licences due to expire on 31 March 1979 for a period of one month to 30 April 1979. The Committee expressed the opinion that the authority for this extension was questionable. The Ministry has legal opinion to the effect that the statutory authority is adequate. Without going into the merits of the legal arguments, we acknowledge that it is possible they may be correct. However, the Committee feels quite justified in having brought the matter to the attention of the House with a re-iteration of our position: where differences of opinion exist, it is preferable that the differences be resolved by the clarification of the language in question.

Regulations Made Under the Supposed Authority of Descriptive Statutory Language

As your Committee pointed out in earlier reports (First Report 1978 at pages 43-45 and the First Report 1978 at page 30), the practice is much too prevalent of relying upon statutory language that is, in the opinion of this Committee, descriptive only as authority for the making of regulations. Instances of this kind continue to occur with the result that it is possible the regulations in question might be found to be ultra vires if challenged in the courts. One example of this questionable practice follows.

O.Reg. 703/79. The Corporation Securities Registration Act

Section 2 of this regulation authorizes certain officials in the Ministry of Consumer and Commercial Relations to sign certain certificates in place of the Minister.

Your Committee can find no certain authority for this delegation. Presumably subsection 10(3) of the Act, as re-enacted by S.O. 1971 (Second Session), Chapter 8, section 1(2), was relied upon. In our opinion the language is descriptive only. It reads: "and shall be signed by (the Minister) or by such officer of the (Ministry) as is designated by the Lieutenant Governor in Council by regulation."

On the other hand, legal counsel in the Ministry take the view that the Committee has taken a too grammatical interpretation of the language of the statute and that in any reasonable interpretation of the legislation the intent is clear to authorize the delegation effected by the regulation.

This may well be. Nevertheless, the doubt persists and in the view of the Committee ought to be put to rest.

Regulations Made Retroactive Without Statutory Authority

This is a perennial problem in which expediency appears to prevail over the law of the land. Retroactivity has been a matter of concern to your Committee and its predecessors: see First Report 1978 at pages 32-38; First Report 1979 at page 28; Second Report 1979 at pages 8 and 9.

Perhaps it would be well to make some general observations on this subject and to explain the position taken by the Committee in these matters.

We take it to be good law that an authority to whom power has been delegated by statute must act within the scope of the authority given. It follows that statutory authority to exercise a power does not include the right to exercise that power retrospectively unless that right is given by the statute. Thus we find many examples of statutory provisions authorizing retrospective regulations.

However, no matter what one's view of the law may be, we would point out the matter is clearly stated in the guidelines governing the preparation and processing of regulations:

Regulations should not have retrospective effect unless clearly authorized by statute.

In these circumstances we feel that it is our proper function to report to the House any contraventions of this principle.

However, in the three instances cited below we hasten to state that to the best of our knowledge no rights were adversely affected or any obligations imposed. In fact, each of these regulations resulted in an increase in benefits.

O.Reg. 694/79. The Hunter Damage Compensation Act

This regulation increases the maximum amounts payable to aggrieved persons in certain instances. It was filed 25 September 1979 and section 3 provides for it to come into force 15 September 1979. Your Committee has found no authority for this retroactivity.

O.Reg. 849/79. The Coroners Act, 1972

This regulation, which increases a number of fees and allowances payable to coroners and others, was filed 16 November 1979 and subsection 8(1) provides for parts of it to be retroactive to 1 November 1979. The Committee has found no authority to make the parts in question retroactive.

O.Reg. 900/79. The Family Benefits Act

This regulation, which amends the formula for computing the amounts of allowances payable to certain recipients, was filed 6 December 1979. Section 2 provides for it to have come into effect 1 December 1979. Your Committee is not aware of any statutory authority under which the retroactive aspect of this regulation could be made.

CHAPTER IV

NOTICE AND COMMENT

The Committee has followed with interest the work of the Ontario Commission on Freedom of Information and Individual Privacy chaired by Dr. Carlton Williams. Of special interest was Research Publication 9 entitled "Rule-Making Hearings: A General Statute for Ontario?" by David J. Mullan, a law professor at Queen's University.

It was noted that the views expressed in the paper were those of the author and that the subject was one on which the Commission had not then (February 1979) reached a final conclusion.

This Committee awaits with considerable interest the Commission's report which we understand will be handed down soon.

While engaged in this educational process, the Committee studied the Report of the Royal Commission Inquiry into Civil Rights 1968 (the McRuer Commission) insofar as it dealt with the procedure commonly referred to as "Notice and Comment"; that is, a statutory requirement for advance notice of proposed regulations followed by an opportunity for all interested persons to make known their views to those proposing the secondary legislation.

In our endeavour to have a thorough knowledge of this subject, we also studied the Third Report of the Special Committee on Statutory Instruments 1969 (the MacGuigan Committee). This is a report to the House of Commons, Ottawa.

We therefore believe that we are in a position to consider with some degree of expertise any recommendations that the Williams Commission may make in this field. The Committee proposes to give high priority to a consideration of any matters in the Commission's report within our jurisdiction.

CHAPTER V

CONCLUSION

The Committee plans another report in the Fall of this year.

By then our Counsel will have completed his detailed examination of the regulations filed up to the end of September (some 700-800) and will have made his report on them to us. In accordance with our practice, we will bring to the attention of the House any regulation that we feel is not in accord with the Act under which it was made or that is not in line with the guidelines adopted by the House last Session and now set out in the Terms of Reference of this Committee.

In addition to that major undertaking, we plan to study the so-called positive and negative resolutions procedure which has found some degree of acceptance in the parliaments at Westminster and at Ottawa.

We propose also to consider whether or not the form of regulations as published in The Ontario Gazette can be improved upon from the public's point of view. Should the subject heading be more precise? Should each regulation have a short explanatory note as is done in Ottawa? Should the statutory authority for a regulation be more specific? These are the kind of questions we propose to examine.

The Committee will also consider means to improve existing procedures to assist persons aggrieved by regulations already in place to air their grievances.

So far as the Committee is able, we will continue to ensure that Executive legislation in Ontario is indeed subordinate legislation within the particular legislative powers that the Legislature has delegated to the Executive.

We consider it to be our function to bring to light and report any abuse of delegated power that would tend to discredit the legislative process in Ontario.

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Standing Committee On Regulations And Other Statutory Instruments

Second Report • 1980

STANDING COMMITTEE ON REGULATIONS

AND

OTHER STATUTORY INSTRUMENTS

SECOND REPORT, 1980

C O R R I G E N D U M

- Page 1 Fourth paragraph, last line of quotation should read "Session of the Legislature at which it was passed...".
- Page 6 First paragraph should read "The Chairman also drew to the attention of the delegates the fact that the Report of the Ontario Royal Commission on Freedom of Information and Individual Privacy had been released just prior to the Conference. The delegates accepted the Chairman's offer to file as an appendix to the official Hansard proceedings the relevant chapter from the Royal Commission Report dealing with rule-making procedures and with the matter of notice and comment. The principle of notice and comment received considerable attention during the Conference proceedings."
- Page 6 Second paragraph, clause 4(a), Line 2 should read "Legislation Committees in other Commonwealth".
- Page 9 Second last sentence in the last paragraph should read "in Ontario as it operates from day to day is as efficient as any other".
- Page 14 O.Reg 88/80: The Highway Traffic Act: Ministry of Transportation and Communications should read O.Reg. 188/80: The Highway Traffic Act: Ministry of Transportation and Communications.
- Page 19 Last word in the last paragraph should read "injustice".
- Page 19 Third paragraph, first sentence should read "In one of these, your Committee concluded after a hearing that it did not".

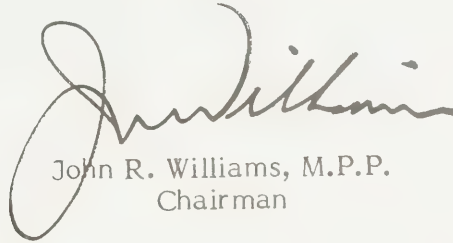


LEGISLATIVE ASSEMBLY

The Honourable John E. Stokes, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Regulations and Other Statutory Instruments
has the honour to present its Second Report and commends it to the House.



John R. Williams, M.P.P.
Chairman

Queen's Park
11 December 1980

MEMBERSHIP OF THE COMMITTEE

SAM CUREATZ
MICHAEL DAVISON
JOHN EAKINS
DONALD C. MacDONALD

BRUCE McCAFFREY
ROBERT McKESSOCK
CLARKE T. ROLLINS
JOHN R. WILLIAMS

A. SMIRLE FORSYTH
Clerk of the Committee

LACHLAN R. MacTAVISH, Q.C.
Counsel to the Committee

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ORDER OF REFERENCE

Extract from the Votes and Proceedings of the Legislative Assembly of Ontario, Friday, 14 March 1980:

On motion by Mr. Wells, seconded by Mr. Miller (Muskoka),

Ordered - That the following Standing Committee be established for this Session, with power to examine and enquire into such matters as may be referred to it by the House, with power to send for persons, papers and things, as provided in Section 35 of The Legislative Assembly Act:

The Standing Committee on Regulations and Other Statutory Instruments is appointed for this Session to be the committee provided for by section 12 of The Regulations Act, and has the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (a) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) Regulations should be expressed in precise and unambiguous language.
- (d) Regulations should not have retrospective effect unless clearly authorized by statute.
- (e) Regulations should not exclude the jurisdiction of the courts.
- (f) Regulations should not impose a fine, imprisonment or other penalty.
- (g) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like).
- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

And that the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of The Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

And that the Committee shall have the power to employ counsel and such other staff as it considers necessary.

Extract from THE REGULATIONS ACT, R.S.O., 1970, c. 410:

12.(1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

(2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.

(5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

I - INTRODUCTION

Your Committee's Terms of Reference requires the Committee to report to the House its observations, opinions and recommendations with respect to the Regulations. Before dealing specifically with the Regulations, your Committee believes that it would be helpful to state some general observations on the law applicable to legislation.

Your Committee is advised that every Act and every Regulation, regardless of its vires or its substance and form, is an effective instrument, its true intent and meaning to be taken from its actual language, until challenged in a court of competent jurisdiction and found to be invalid.

Unless it is provided otherwise, Statutes and Regulations come into force and are effective as soon as they are made. However, it is commonly provided otherwise.

For example, in Ontario, all statutes are subject to the general rule stated in section 5 of The Statutes Act:

5. Unless otherwise provided therein, every Act comes into force and takes effect on the 60th day after prorogation of the Session of the Legislature at which it was passed...

Of course, many Acts do in fact provide another day for commencement, such as on Royal Assent, on Proclamation of the Lieutenant Governor, or on a specified day.

The general rule in Ontario for the commencement of Regulations which come within the scope of The Regulations Act is stated in section 3 of that Act. It reads:

3. Unless otherwise stated in it, a Regulation comes into force and has effect on and after the day upon which it is filed (with the Registrar of Regulations).

The limitation upon the meaning of the phrase "Unless otherwise stated in it,..." has been expressed on many occasions by this Committee, namely, that a Regulation may provide that it is to come into force on a day

subsequent to its filing with the Registrar of Regulations. However, unless the Act under which the Regulation is made clearly provides for retroactive effect, the Regulation cannot be made to come into force and take effect on a day prior to its filing: see First Report 1978, pages 32-38; First Report 1979 at page 28; Second Report 1979 at pages 8, 9 and 28; First Report 1980 at pages 9 and 10.

Your Committee, regardless of what may be said as to the law, is of the opinion that any Regulation given retroactive effect without statutory authority is vulnerable. Any such practice which might jeopardize the validity of a Regulation so treated ought to be avoided.

Perhaps it would be well to point out that this practice also contravenes one of the guidelines in your Committee's Terms of Reference as approved by the House:

- (g) Regulations should not have retrospective effect unless clearly authorized by statute.

Your Committee is also informed that over the years the number of Ontario Regulations that have been challenged in the courts in proportion to the number of Regulations in force is miniscule. Furthermore, the number of Regulations that are so challenged in proportion to the number that are found by the courts to be irregular in whole or in part for any reason is also very small indeed.

Having said that, and returning for the moment to the subject of retroactivity, your Committee must also point out that it has no knowledge of any Regulation with unauthorized retroactivity having been challenged in the courts of Ontario. This is so because in almost all cases a benefit has been conferred or, putting it the other way round, no one was hurt by the retroactivity. This being so, the examples of this practice can be said to be in the public interest and should be excused on that ground.

It is also true that any instance of this practice can, of course, be validated by appropriate legislation. In this way any suggestion of illegality can be quickly removed.

Your Committee also recognizes that a number of the cases that it is bringing to the attention of the House in this Report were retroactive for a relatively short period of time - a day, a few days, or at most a month or so, brought about in most instances by inadvertent delays in the administrative processes. If it is too optimistic to hope for the complete elimination of instances of this sort, they should be kept to a minimum.

Of the 750 Regulations your Committee is reporting upon now, there are twelve promulgated by five Ministries which are in the opinion of the Committee vulnerable in that they were brought into force before they were filed, without any apparent statutory authority for so doing. These are to be found in the last part of Chapter III.

Since the Spring of 1972 a procedure has existed for the judicial review of Regulations. The Judicial Review Procedure Act, 1971 provides for applications to the Divisional Court of the Supreme Court of Ontario to hear and determine by way of a declaratory judgment the validity of any Regulation. This jurisdiction, which is of a relatively summary nature, has proven to be popular with litigants, especially with matters relating to the marketing of agricultural products, the environment, police and employment standards.

II - CONFERENCE ON DELEGATED LEGISLATION

The first Conference of Delegated Legislation Committees ever to be held in the Commonwealth was sponsored and hosted by the Standing Committee on Regulations and Ordinances of the Australian Senate. The Conference was held during the week of 29 September 1980, in Canberra, Australia. An interim verbal report on the Conference was made by the Chairman to the Committee on 23 October 1980.

The formal meetings of the Conference were held in the Federal Senate Chambers with representatives from Ghana, India, Papua-New Guinea, the United Kingdom and Zambia. As well, Canada was represented by members from the Federal Government, the Province of Saskatchewan, and the Chairman of this Committee as the representative for the Province of Ontario. All the states and territories of Australia were represented along with their Federal hosts.

The chairman of each committee represented at the Conference was asked to submit to the Conference organizers prior to the Conference a background paper setting out the system for the making and control of delegated legislation in his or her respective jurisdiction, as well as outlining the method of operation of each committee.

A two-part twelve page background paper was prepared by the Chairman of the Committee and filed with the Conference organizers as requested. Part One of the paper provided an historical resume of the development and growth of regulations and the regulatory powers in Canada. Part Two dealt with the immediate predecessors to the present-day Regulations Committee and with your Committee's work in reviewing the Regulations.

The Conference was opened and addressed by the Governor General of Australia, His Excellency Sir Zelman Cowen. Chairmen of the various Committees addressed the Conference on procedures, trends and problems in the areas of their jurisdiction.

Authorities who addressed the Conference included:

- 1) Professor G.S. Reid, Deputy Vice-Chancellor of the University of Western Australia, on Parliamentary Control of the Executive;
- 2) Sir Robert Speed, Mr. Speaker's Counsel, House of Commons, Westminster, on Parliamentary Action on Delegated Legislation;
- 3) Dr. Eugene Forsey, former Canadian Senator and leading Commonwealth authority on constitutional matters, on Delegated Legislation and the Rule of the Law;
- 4) Professor J.E. Richardson, Australian Commonwealth Ombudsman, on Administrative Review;
- 5) Dr. D.C. Pearce, Reader in Law at the Australian National University and leading Australian authority on delegated legislation, and on judicial and parliamentary review.

Delegates expressed their appreciation of the Commonwealth Parliamentary Association for its support and financial assistance to the Conference.

All of the proceedings of the Committee were transcribed and formally recorded in Hansard. Copies of Hansard have been made available to the Committee and will be made use of in reviewing all of the forthcoming comparative information from the Conference organizers.

In addressing the delegates at the Conference, the history of Regulations in Ontario was synopsisized by the Chairman. Particular emphasis was given to the current level of activity of the Ontario Committee, including an explanation of its practices and procedures. Reference was made to the existence of the Cabinet Committee which reviews, amends, alters or otherwise deals with Regulations in their draft form before approval is given by the Cabinet. It is only after this process has been followed that a Regulation will be published and officially entered in The Ontario Gazette. The fact that there existed in the Province of Ontario a mechanism for dealing with Regulations both before and after their enactment was of great interest to the delegates.

The Chairman also drew to the attention of the delegates the fact that the Ontario Royal Commission on Freedom of Information and Individual Privacy had been released just prior to the Conference. The delegates accepted the Chairman's offer to file as an appendix to the official Hansard proceedings the relevant chapter from Royal Commission Report dealing with rule-making procedures and with the matter of notice and comment. The principle of notice and comment received considerable attention during the Conference proceedings.

The success of the Conference is reflected in the following resolutions which were carried unanimously at the conclusion of the Conference:

- 1) That a committee of five delegates from different committees represented at the existing Conference be set up immediately to co-ordinate continued co-operation and exchange of views between participating Committees and to promote arrangements of future Conferences.
- 2) That the Committee be known as the Commonwealth Delegated Legislation Committee.
- 3) That the Committee appoint a secretary and be authorized to meet by agreement when any three members of the Committee or their deputies or proxies are available to hold such a meeting.
- 4) That the Committee seek the assistance of the Commonwealth Parliamentary Association and
 - a) seek out and promote the formation of similar Delegated Legislature Committees in other Commonwealth Parliaments (or in other Parliaments);
 - b) publicize the report of proceedings of this Conference;
 - c) produce if possible, a bulletin available to all bodies at intervals of six to twelve months (either as part of an existing CPA publication, or in a separate document), such

bulletin to contain information about the activities of local Committees, changes in regulatory procedures and activities and the interchange of visits between members of such local Committees;

- d) consider and assist in the support of regulatory review in other Commonwealth Parliaments;
 - e) promote and prepare for the further holding of similar conferences at intervals of not more than four years hereafter, with a view to holding the first follow-up conference within the next two or three years.
- 5) That subject to the convenience of local bodies, the next Conference to be held in Canada.
- 6) The Conference notes that the Australian Senate Standing Committee on Regulations and Ordinances will prepare and forward to participating Committees a draft summary report of this Conference containing a consensus of views arising from this Conference, for early comment, and will thereafter prepare a final Report for circulation to the participating committees.
- 7) The Conference affirms the desirability of parliamentary committees with adequate powers and resources to advise parliaments in the performance of the functions of parliaments in relation to delegated legislation.

With regard to resolution 6 as set out above, it is the intention of your Committee to deal in depth with the summary report from the Conference along with the official Hansard and background papers from the Conference at the next sittings of your Committee.

III - O.REG. 01/80 to O.REG. 750/80

Statistics

During the first three-quarters of the current year, that is, from 1 January 1980 to 30 September 1980, there were a total of 750 Regulations filed with the Registrar of Regulations and published in The Ontario Gazette pursuant to the requirements of The Regulations Act. It is interesting to note that in the same period last year the number was considerably lower, namely 660.

These 750 Regulations occupy 1,486 pages of The Ontario Gazette, which is substantially less than the 2,190 pages in the same nine-month period last year.

As instructed, Counsel to the Committee has examined in detail and reported to the Committee on the 750 Regulations that are the subject of this Chapter. This was an onerous, time consuming and technically difficult task performed on the Committee's behalf by Counsel because there is no other way, in a practical sense, of discharging this statutory responsibility which may be said to be the Committee's primary function.

Dividing these Regulations into the three basic types, principal, amending, and revoking, your Committee finds that 195 were principal, 528 amended principal Regulations, and 27 revoked Regulations. The ratio of principal to amending has increased this year compared with last year and the number of revoking Regulations has increased from 16 in the first three-quarters of last year to 27 in the corresponding period this year.

The 750 Regulations under consideration were made under the authority of 131 different Acts - exactly the same number of Acts as in the same period last year. The following table compares Regulations made under certain Acts last year and this year.

1 January to 30 September

<u>Act</u>	<u>1979</u>	<u>1980</u>
Planning Act	124	147
Highway Traffic Act	54	61
Crop Insurance Act	16	41
Game and Fish Act	13	28
Parkway Belt Planning and Development Act	41	24
Education Act	Less than 10	22
Environmental Assessment Act	Less than 10	19
Milk Act	Less than 10	19
Forest Fire Prevention Act	Less than 10	19

All the other 122 Acts had less than 10 Regulations made in the period under review.

In the pages that follow your Committee has criticized twenty-six Regulations and, in one case, the legislation under which a particular Regulation was made.

In the opinion of your Committee this is an excellent record. The officials involved in the preparation of Regulations both in the ministries and, more particularly, in the Office of the Registrar of Regulations are highly skilled lawyers with experience in the specialized and technical field of delegated legislation.

In spite of the Committee's criticisms, most of which are the result of ministerial requirements rather than of lack of judgment on the part of the officials involved in the process, your Committee believes that the system in Ontario as it operates from day to day is as efficient as any other jurisdiction anywhere of which it has knowledge.

Commencement Formulas

O. Reg. 163/80: The Provincial Offences Act: Ministry of the Attorney General.

The Regulation has caused the Committee to wonder whether or not it is in force. The situation is novel so far as your Committee is aware.

The Act is divided into nine Parts. Sections 149 provides:

149. This Act is to come into force on a day to be named by proclamation of the Lieutenant Governor.

Subsection 5(3) of The Interpretation Act provides that such a proclamation may be made to apply to the whole or any part or parts or portion or portions or section or sections of the Act.

An italic note in O.Reg. 163/80, as printed in the Gazette, states that: "This Regulation comes into force on the day The Provincial Offences Act, 1979 comes into force, (See S.O. 1979, Chapter 4, Section 149)".

The problem has arisen because the Act, except Part II, has been proclaimed in force. Can it be said that the Act is in force when one of the nine Parts is not in force? Can it be said that the Regulation is in force when all of the Act is not in force? Your Committee does not know for sure.

Section 5 of The Interpretation Act may resolve the matter for sophisticated lawyers, but is no help to anyone else. Surely the intent could have been clearly, concisely and more importantly, expressly, stated.

Your Committee recommends that use of this commencement formula be avoided.

Over-Delegation of Powers

O.Reg. 441/80: The Meat Inspection Act (Ontario): Ministry of Agriculture and Food

This Regulation was made under the clear authority of clause 10(c) of the Act which authorized the Lieutenant Governor in Council to make Regulations:

- (c) prescribing the powers and duties of the Director (of the Veterinary Services Branch of the Ministry) and of Inspectors (appointed under the Act) or any class thereof.

However, your Committee is of the opinion that this power is too great to be delegated by the Legislature to the Lieutenant Governor in Council or anyone else. The prescribing of the powers of these officials should have been laid down in the Act after consideration by the House and not left to the Regulations. Duties, yes, but not powers.

Your Committee recommends that the House recognize the great difference between powers and duties in instances of this kind and that the House retain its jurisdiction over powers.

Adequacy of Delegated Authority

O.Reg. 380/80: The Industrial Standards Act: Ministry of Labour

This Regulation, which sets out the duties of employers and advisory committees, appears to have been made under authority of section 17 of the Act. It reads:

17. The Lieutenant Governor in Council may make such regulations as he considers necessary for carrying out this Act and for its efficient administration.

Assuming this to be the only authority in the Act (and no other has been found) for making Regulations, the question is: Is section 17 adequate? Is this general language sufficient to authorize the setting out of the duties of employers and advisory committees in a Regulation?

If the authority in this instance is adequate, then it makes redundant the specific clauses that often follow a general authority of the kind typified by section 17.

The problem raised by O.Reg. 380/80 is typical of many. The patterns found in the Statutes of Ontario (and other jurisdictions as well) vary to such an extent that it is impossible to discern any common formula.

The pattern used in any given Act seems to depend on the views of the drafter and those instructing the drafter, plus the period in which the Act was prepared. Styles today differ from those of a decade ago and so on back through the years.

So far in its deliberations on this great disparity, the Committee is unable yet to formulate any set of principles that ought to be followed or any guidelines that might be universally accepted. The study is continuing and your Committee continues to be hopeful.

Conditions Precedent

O.Reg. 115/80; O.Reg. 194/80; O.Reg. 663/80; O.Reg. 664/80: The Retail Sales Tax Act: Ministry of Revenue

These four Regulations create a number of specific exemptions from the retail sales tax.

It would appear that the authority for making these Regulations could not have been subsection 7(1) of the Act for the simple reason that they were not made by the Minister of Revenue. They were made by the Lieutenant Governor in Council. One must, of necessity, turn to section 42. The relevant portions read:

42(1) For the purpose of carrying into effect the provisions of this Act according to their true intent and of supplying any deficiency therein, the Lieutenant Governor in Council may make such regulations as are considered necessary and advisable.

(2) Without limiting the generality of subsection 1, the Lieutenant Governor in Council may make regulations,

(g) providing for the rebate of tax in whole or in part owing to special circumstances, and prescribing the terms and conditions under which such rebates may be made.

As clause (g) provides specifically for rebates, it would seem to have been the authority under which the four Regulations mentioned above were made.

Nevertheless, your Committee is concerned about the statutory condition attached to the exercise of the authority to make such a Regulation, namely, "owing to special circumstances".

Your Committee is of the opinion that either the Regulation or the forms or, better still, both, would be greatly improved if they contained a recital to the effect that the condition precedent has been performed, that is, that special circumstances did in fact exist to bring about the making of the Regulation.

Regulations Made Without Statutory Authority

O.Reg. 167/80: The Ontario Unconditional Grants Amendment Act, 1979:
Ministry of Intergovernmental Affairs

Section 47 of this Regulation reads:

47. The provisions of this Regulation apply notwithstanding the provisions of any general or special Act and where there is conflict between the provisions of this Regulation and the provisions of any such Act, the provisions of this Regulation prevail.

Your Committee can find no authority in the Act or elsewhere for this extraordinary provision, nor would it expect to find any. If the Legislature had intended to delegate such an overriding position to the Regulation, delegation should be in clear and express terms. Your Committee has been unable to find such delegation in clear and express terms. This is a glaring example of the misuse of power where no power exists.

Your Committee recommends that the making of unauthorized Regulations such as this one be avoided.

O.Reg. 13/80; O.Reg. 144/80; O.Reg. 88/80; O.Reg. 189/80: The Highway Traffic Act: Ministry of Transportation and Communications

These four Regulations were made under the authority of subsection 75(2) of the Act. This provision is the subject of a difference of opinion between the Ministry and the Committee. In the view of the Ministry subsection 75(2) is adequate for the purpose. Your Committee is of the opinion that it is not.

The first of these four regulations designates the commencement date for freeze-up allowances in a defined part of Ontario. The other three designate the termination date of freeze-up allowances. These illustrate the practice that this Committee commented upon in its First Report 1978 at pages 41 and 42 and in the Second Report 1979 at pages 3 and 4.

While your Committee recognizes the views of the Ministry in this matter, it is the Committee's duty to state again its view that where there is a difference of opinion, the difference should be resolved by appropriate remedial action.

O.Reg. 223/80: The Public Commercial Vehicles Act: Ministry of Transportation and Communications

This Regulation extended the "term or period" of vehicle licences issued in respect of public commercial vehicles that were due to expire on the 31st day of March 1980 to and including the 30th day of April 1980.

Your Committee can find no authority for making this Regulation.

Similar extensions were given in 1978 by O.Reg. 240/78 and in 1979 by O.Reg. 192/80. See Second Report 1979 at pages 4 and 5.

The Committee can do no more this year than to repeat the criticism it made last year. Your Committee realizes, of course, that the force of this year's Regulation is now completely spent and that it conferred a benefit upon the holders of public commercial vehicle licences. These facts, however, in your Committee's opinion, do not condone the course of action taken by the Ministry.

Your Committee recommends that a simple amendment to the Act authorizing what appears to have become an annual necessity would be a panacea for this situation.

O.Reg. 667/80: The Ontario Pensioners Property Tax Assistance Act, 1980: Ministry of Treasury and Economics.

Although the object of this Regulation is quite commendable in that it attempts to treat "owners" and "renters" in the same way so that the one class of property occupant is on the same footing as the other so far as eligibility for the grant is concerned.

However, it is clear to your Committee that the Regulation is defective because to achieve its object it in fact amended the Act. Delegated legislation cannot do this without express authority and none can be found in this instance.

The trouble lies in clause 1(h) of the Act, which defines "occupancy cost". Subclause (i), which applies to owners, speaks of municipal tax paid or payable in the year. Subclause (ii), which applies to renters, speaks of rent paid in the year.

The Regulation, in effect, amends the latter to read rent paid or payable in the year. This, in the opinion of your Committee, is going too far because there is no authority for so doing. Therefore, the Regulation is defective.

Regulations Made Retroactive Without Statutory Authority

As is mentioned in Chapter I of this Report, your Committee wishes to bring to the attention of the House twelve Regulations in five Ministries which, in so far as can be ascertained, were made retroactive without any statutory authority for so doing.

For convenience, the Ministries concerned are listed alphabetically.

The Ministry of Community and Social Services

O.Reg. 367/80. The Charitable Institutions Act.

This Regulation, which amends the formula for determining the daily cost of institutional care, came into force on 1 April 1980 but was not filed until 8 May 1980.

O.Reg. 369/80; O.Reg. 511/80; O.Reg. 742/80. The Family Benefits Act.

The first of these three Regulations, which amends the formula for determining a certain allowance, came into force on 1 May 1980 but was not filed until 8 May 1980.

The second of these three, which amends the formula for determining comfort allowances, transportation expenses and basic needs, came into force on 1 June 1980 but was not filed until 17 June 1980.

The third of this group made under The Family Benefits Act, O.Reg. 742/80, remakes O.Reg. 369/80, the first of this group, by again amending the formula for determining the same allowance. It came into force on 1 August 1980 but was not filed until 10 September 1980.

O.Reg. 510/80; O.Reg. 741/80. The Homes for Retarded Children Act.

The first of these two Regulations, which amends the formula under which residents may keep certain of their income for their own use, came into force on 1 June 1980 but was not filed until 17 June 1980.

The second Regulation amended the first. It came into force on 1 August 1980 but was not filed until 10 September 1980.

O.Reg. 365/80. The Homes for the Aged and Rest Homes Act.

This Regulation, which amends the method of determining operating and maintenance costs, came into force on 1 April 1980 but was not filed until 8 May 1980.

The Ministry of Consumer and Commercial Relations

O.Reg. 265/80. The Land Titles Act.

The Regulation, which revoked three Regulations made in 1975, came into force on 1 April 1980 but was not filed until 8 April 1980.

O.Reg. 266/80. The Registry Act.

This Regulation is identical to O.Reg. 265/80 above. It came into force on 1 April 1980 but was not filed until 8 April 1980.

The Ministry of the Environment

O.Reg. 9/80. The Environmental Protection Act, 1971.

This Regulation, which amends a list of municipalities for certain purposes in connection with their sewage systems, was brought into force one day before it was filed.

The Ministry of Revenue

O.Reg. 332/80. The Gasoline Tax Act, 1973.

This Regulation, which delegates certain powers of the Minister of Revenue to certain officials of the Ministry, came into force on 1 April 1980 but was not filed until 1 May 1980.

The Ministry of the Solicitor General

O.Reg. 736/80. The Coroners Act, 1972.

This Regulation, inter alia increases the fees and allowances of coroners and others for services under the Act. It came into force on 1 September 1980 but was not filed until 9 September 1980.

IV - SPECIAL APPLICATIONS FOR HEARINGS BETWEEN SESSIONS OF THE HOUSE

Over the years your Committee and its predecessors have been concerned with the problem that presents itself under the present administrative practices of the Legislature when an application is made to the Committee for a hearing by an aggrieved citizen who feels that he has been unjustly treated by government because of the adverse effect of a particular Regulation upon him, his property or his business. Is it sufficient to say that such a person may take his case to the official administering the Regulation, to the Minister responsible, to his local Member, to the Ombudsman or to the courts?

Your Committee has had a number of cases of this kind in the past and has one before it at the present time in which the person aggrieved has wanted to present his problems to the Committee.

In one of these, Your Committee concluded after a hearing that it did not have jurisdiction. In a second case, the Committee deferred consideration because the Ombudsman was conducting an investigation. In another case, the matter was withdrawn from the Committee's agenda at the request of the applicant.

Your Committee's experience in connection with these cases has caused it to believe that it should be able to accommodate, without undue delay, people who wish to present grievances with respect to Regulations. As things stand now, the Committee would be helpless to deal with any such matter between Sessions of the House.

Your Committee therefore recommends that in order to avoid criticism on the ground that justice delayed is justice denied, its Order of Reference next Session include power to meet at the call of the Chairman between Sessions of the House to deal with emergent matters which, if left in abeyance until the House met, could possibly mean a delay of some months, resulting in injustice.

V - WORK IN PROGRESS

As forecast in our First Report 1980 at page 11, the Committee proposes to give high priority to a consideration in depth of the procedure usually referred to as Notice and Comment in connection with delegated legislation.

An important development in this field was the recent Report of the Ontario Commission on Freedom of Information and Individual Privacy chaired by Dr. Carlton Williams. Your Committee was particularly interested in Volume 2, Chapter 23, titled "Rule-Making Procedures", in which the Commission's recommendations are set out on page 412 as follows:

1. We recommend that governmental institutions engaged in rule-making activity be encouraged to adopt notice and comment procedures so as to facilitate public discussion and informed comment on particular rules proposed for adoption.
2. Consideration should be given to the adoption of provisions requiring notice and comment opportunities in specific statutes which confer rule-making powers on governmental institutions.

These conclusions are of great importance having regard to the earlier views expressed in the Report of the Royal Commission Inquiry into Civil Rights 1968 (The McRuer Commission), the Third Report of the Special Committee on Statutory Instruments 1969 (the MacGuigan Committee), Research Publication No. 9 (Law Professor David J. Mullen) of the Williams Commission, and the Fourth Report to the Parliament of Canada from the Standing Joint Committee of the Senate and House of Commons on Regulations and Other Statutory Instruments, July, 1980. These represent some of the thinking of a number of Canadian authorities in the field.

In this connection, your Committee will also be considering the views expressed by the experts attending the Commonwealth Parliamentary Association Conference held at Canberra, Australia, last September on Delegated Legislation Committees.

In addition, the Committee will be studying the comments and recommendations of the Canadian Federation of Independent Business contained in a brief dated 7 November 1980 in which the Federation urges government "to make relevant information available and consult meaningfully with interested parties affected by the legislative requirements before they become law."

Your Committee will, of course, continue its statutory duty to make a detailed examination of the Regulations filed and published under The Regulations Act during October, November and December of 1980.

The performance of this on-going duty will involve some 300 more Regulations. These will be the subject of the Committee's First Report 1981 which it is anticipated will be presented to the House in the Spring of 1981.

As has been said on other occasions, your Committee considers it the Committee's primary function to ensure that the Regulations which come under its scrutiny are indeed subordinate legislation within the scope of the powers that the Legislature has seen fit to delegate.

VI - SUMMARY OF RECOMMENDATIONS

1. That the commencement formula of O.Reg. 163/80 under The Provincial Offences Act, 1979 be avoided in the future. (see page 10).
2. That more attention be paid to delegating formulas in order to clarify and simplify the form and substance of these provisions (see page 12).
3. That where an Act requires a condition to be met before a Regulation can be made, the Regulation should recite the fact that the requirement of the Act had been met (see page 13).
4. That Regulations such as O.Reg. 167/80 under The Ontario Unconditional Grants Amendment Act, 1979 be avoided (see page 14).
5. That The Highway Traffic Act be amended to legitimate the practice illustrated by O.Reg. 13/80, O.Reg. 144/80, O.Reg. 188/80 and O.Reg. 189/80 (see page 14).
6. That the Ministry of Treasury and Economics should recognize the fact that a Regulation cannot amend an Act without specific authority for so doing (see page 15).
7. That all Ministries observe Guideline (g): "Regulations should not have retrospective effect unless clearly authorized by statute (see pages 2 and 16-18).

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Standing Committee on Regulations and Other Statutory Instruments

First Report 1981

1st Session 32nd Parliament
30 Elizabeth II

The Honourable John M. Turner, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Regulations and Other Statutory Instruments has
the honour to present its First Report and commends it to the House.

A handwritten signature in dark ink, appearing to read 'Ernie Eves', with a stylized flourish at the end.

Ernie Eves, M.P.P.,
Chairman

Queen's Park
June 1981



MEMBERSHIP OF THE COMMITTEE

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Chairman

BILL BARLOW

ANDY BRANDT

TONY GRANDE

RAY HAGGERTY

MICKEY HENNESSY

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GORDON MILLER

BOB RUNCIMAN

HOWARD SHEPPARD

DOUGLAS ARNOTT

Clerk of the Committee

LACHLAN R. MacTAVISH, Q.C.

Counsel to the Committee

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ORDER OF REFERENCE

Extract from the Votes and Proceedings of the Legislative Assembly of Ontario, Friday, April 24, 1981.

On motion by Mr. Wells, seconded by Mr. Miller.

Ordered - That the following Standing Committee be established for this Session, with power to examine and enquire into such matters as may be referred to it by the House, with power to send for persons, papers and things, as provided in Section 35 of The Legislative Assembly Act:

The Standing Committee on Regulations and Other Statutory Instruments is appointed for this Session to be the committee provided for by section 12 of The Regulations Act, and has the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (a) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) Regulations should be expressed in precise and unambiguous language.
- (d) Regulations should not have retrospective effect unless clearly authorized by statute.
- (e) Regulations should not exclude the jurisdiction of the courts.
- (f) Regulations should not impose a fine, imprisonment or other penalty.
- (g) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like).
- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

And that the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of The Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

And that the Committee shall have the power to employ counsel and such other staff as it considers necessary.

Extract from THE REGULATIONS ACT, R.S.O., 1970, c.410:

12.(1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

(2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.

(5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

PART I

I - INTRODUCTION

This being the first session of a new parliament, the Committee is, in a technical sense, a new committee; it has twelve members, its predecessor had eight. Of the eight making up last year's Committee, only two have returned: Mr. Hennessy and Mr. MacDonald. However, having regard to the fact this is a standing committee with statutory permanency, it is in a very real sense a continuation of its predecessors. The work in the future will be similiar to and a continuation of the work in the past which has been recorded in the Reports already produced and tabled in the House: two in 1978, two in 1979 and two in 1980.

The most important function of this Committee was given to it in 1969 by the Legislature when The Regulations Act was amended by adding section 12 (see page ii of this Report). It reads in part:

"every Regulation stands permanently referred to the Committee"

and the Committee is required to

"examine the Regulations with particular reference to the scope and method of the the exercise of delegated legislative power but without reference to the merits of the policy or objective to be effected by the Regulations or enabling statutes".

At the same time the Committee keeps a watchful eye on how the Ontario system of handling delegated legislation is working from a practical point of view having regard to the systems of other jurisdictions in Canada and elsewhere.

The Committee also feels that it has a duty to aggrieved persons to hear their complaints and to report to the House thereon, provided, of course, that the complaint comes within the Committee's field of competency as laid down in The Regulations Act and in its Order of Reference.

Part I of this Report completes the work of our immediate predecessor in connection with the Regulations filed in 1980, particularly those filed in the

fourth quarter of that year. This Report also contains the statistics for the whole of 1980 and a revised and complete summary of the recommendations with respect to the 1980 Regulations.

Due to an unfortunate typographical error in the Second Report 1980 which caused the intent of the Committee to be misstated, we now wish to take this first opportunity to set the record straight by stating the Committee believes that the system in Ontario as it operates from day to day and from year to year is as efficient and effective as that of any other jurisdiction anywhere of which we have knowledge.

II - STATISTICS: 1980

This chapter contains statistics with respect to the Regulations filed in the year 1980 and compares those statistics with those of previous years.

The total number of Regulations filed pursuant to The Regulations Act in 1980 was 1,141. This compares with 962 in 1979, 1,007 in 1978, and 975 in 1977, thus showing an increase in the period under review.

These 1,141 Regulations occupy 2,132 double-column pages in The Ontario Gazette compared with 2,568 in 1979, 1,965 in 1978, and 1,797 in 1977.

The three basic categories of Regulations, namely, principal, amending, and revoking, have remained fairly constant so far as the percentage of Regulations in each category is concerned through the four-year period for which we have statistics: 80% are Regulations that amend other Regulations, 18% are new principal Regulations, and 2% revoke Regulations.

The 1,141 Regulations filed during 1980 were made under the authority of some 184 Acts. This represents a substantial increase over the previous years: 159 Acts in 1979, 150 in 1978 and 138 in 1977.

In 1980 some eighteen Acts produced more than ten regulations each. The following table lists these eighteen Acts and, for purposes of comparison, shows the figures for the preceeding three years. It will be seen that by far the largest number in 1980 was produced under The Planning Act as was the case in 1979, 1978, and 1977 and, we assume, in earlier years. This situation was commented upon in earlier Reports (see First Report 1980, page 3; First Report 1979, pages 2-6; and Second Report 1978, page 13) in which alternative methods of handling these planning matters were suggested. This Committee endorses the views of our predecessors, particularly those set out in Chapter II of the First Report 1979.

<u>Authorizing Act</u>	<u>Number of Regulations</u>			
	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
Planning Act	309	263	208	238
Highway Traffic Act	79	88	92	82
Health Insurance Act	25	31	34	50
Games and Fish Act	17	23	25	50
Environmental Assessment Act				44
Crop Insurance (Ontario) Act	37	37	18	39
Parkway Belt Planning and Development Act	57	67	56	37
Milk Act	24	41	22	34
Education Act	20	24	20	26
Retail Sales Tax Act	---	---	---	21
Forest Fires Prevention Act	---	---	---	19
Apprenticeship and Tradesmen's Qualification Act	---	---	---	16
Environmental Protection Act	---	---	---	12
General Welfare Assistance Act	---	---	---	12
Homes for the Aged and Rest Homes Act	---	---	---	12
Public Commercial Vehicles Act	---	---	---	12
Public Hospitals Act	7	11	12	12
Provincial Parks Act	---	---	---	11

The blanks indicate that fewer than 10 Regulations were made in the years indicated.

III - O.REG. 751/80 to O.REG. 1141/80

As was pointed out in Chapter I of this Report, The Regulations Act requires this Committee to examine the Regulations and

"to report its observations, opinions, and recommendations to the Assembly from time to time."

In the Second Report 1980, which covered the first three-quarters of the calendar year, the Committee saw fit to draw the attention of the House and the Ministries concerned to some 27 Regulations which were considered to be irregular for one reason or another. Later in this chapter we will be critical of some 12 Regulations of the 391 filed during the fourth quarter of that year.

Looking at the whole of the year 1980, we find that of the 1,141 Regulations filed only 39 have been singled out for report.

In our opinion this speaks well for the officials in the public service of Ontario who are involved in the preparation and processing of delegated legislation in the Ministries and in the office of the Registrar of Regulations. We feel that these legal specialists who function for the most part anonymously behind the scenes are to be commended for the expertise they exercise in this technical field. We should add in all fairness that much of the criticism the Committee makes is the result of inadvertent delays and the decisions of others rather than any lack of judgment on the part of the officials involved in the process.

Here follow the comments of the Committee respecting the Regulations which it finds to be irregular.

For ease of reference, these are arranged alphabetically in accordance with the responsible Ministry.

As is now required by the Committee's Order of Reference, each of the Regulations in question has been discussed by our Counsel with the Registrar of Regulations and then with the legal officers in the Ministry concerned. Thus all participants are aware of the Committee's opinions and comments and have had an opportunity of making their points of view known to the Committee.

Because of the dissolution of the Assembly and the consequent demise of the

Committee, time did not permit various Ministers themselves to be advised, a function that has recently been carried out by the chairman of this Committee, so that it can be said that the procedures established by order of the House have been followed in the best way possible in the circumstances.

Ministry of Agriculture and Food

O.Reg. 902/80. Non-Resident Agricultural Land Interest's Registration Act, 1980.

Clause 11(c) of the Act authorizes the Lieutenant Governor in Council to make regulations prescribing the powers and duties of inspectors appointed for the purposes of the Act.

The Committee finds adequate authority in the Act for every provision of the Regulation, including section 2, which reads:

2.(1) For the purposes of the Act and this Regulation, an inspector may, during normal business hours, enter any premises, other than a dwelling, in which he believes on reasonable and probable grounds, there are books, records or documents relating to an interest held by a non-resident person in agricultural land in Ontario.

(2) For the purposes of the Act and this Regulation, an inspector may demand the furnishing by the owner or custodian thereof of any books, records, documents or extracts therefrom, in a place referred to in subsection 1 relating to an interest held by a non-resident person in agricultural land.

(3) Where an inspector demands the furnishing of books, records, documents or extracts therefrom, the person having custody thereof shall furnish them to the inspector, and the inspector may detain them for the purpose of photocopying them, provided such photocopying is carried out with reasonable dispatch and the inspector shall forthwith thereafter return them to the person who furnished them.

(4) Where an inspector makes a demand under subsection 2, the demand shall be in writing and shall include a statement of the general nature of the investigation and where practicable, the general nature of the books, records, documents or extracts required.

The Committee is of the opinion that the Legislature should follow the precedent found in many Acts where such powers are set out in the Act and should not delegate authority to prescribe wide powers such as those conferred by Section 2 quoted above.

In short, we feel that the substance of section 2 of this Regulation should appear in the Act, not in the Regulation. Had this course been followed, the Legislature would have had the opportunity of scrutinizing and passing upon the scope of such powers.

It is to be noted that our predecessors have been critical of delegations of this kind. See First Report June 1978, page 45 on The Welfare Units Act, The Operating Engineers Act, The Ontario Food Terminal Act, The Regulations Act and The Edible Oil Products Act. See also Second Report 1979, item 8 on page 12. See also Second Report 1980 at page 11 with respect to The Meat Inspection Act (Ontario).

Many more examples of this practice could be cited, including another very recent one: clause 22(j) of The Healing Arts Radiation Protection Act, 1980 authorizes the Lieutenant Governor in Council to prescribe additional duties and powers of the Healing Arts Radiation Protection Commission, its Director and inspectors.

Ministry of the Environment

O.Reg. 834/80. Environmental Protection Act, 1971.

This Regulation creates a prohibition against persons operating certain types of incinerators that emit gases of a certain density into the air.

Although nowhere in the Act or elsewhere in the Regulation does the word "incinerator" appear, it would seem that there is authority to make prohibitions of this sort in clause 94(1)(b).

It reads:

- (1) The Lieutenant Governor in Council may make regulations,
 - (b) prohibiting or regulating and controlling the depositing, addition, emission or discharge of any contaminant...into the natural environment from any source of contaminant...

However that may be, the Committee is curious to know why this particular prohibition was put in a Regulation rather than in the Act having regard to the fact that the Act contains many prohibitions, for example, sections, 5, 8, 14, 23, 24, 26, 31, 40, 41, 50, 51, 59a, 61, 65 and 67.

The Committee is of the view that the particular prohibition that is the subject of the Regulation in question would be better placed if it were to be found among its peers in the Act.

Furthermore, we question the wisdom of the Legislature in delegating to anyone the power to create prohibitions of this or any other substantial kind. Such matters should, we recommend, be dealt with in the Legislature where they can be subjected to scrutiny and debate.

Ministry of Labour

O.Reg. 1083/80. Occupational Health and Safety Act, 1978.

This Regulation is a Ministerial order adopting a certain inventory of biological or chemical agents for the purposes of section 21 of the Act.

The authority for making such an order appears to be subsection 2(3) of the Act. It reads:

(3) For the purposes of this section, "new biological or chemical agents or combination of such agents" means any such agent or combination of such such agents other than those used in one or more work places and included in an inventory compiled or adopted by the Ministry.

This authority, if that indeed is what it is, is somewhat obscure and can be criticized in that respect.

However, the Committee wishes to bring to the attention of the Ministry and the House the fact that the "authority" forms part of a definition and clearly the language is descriptive only. It does not authorize anyone to do anything. Instances of this kind are, regrettably, common and have been elaborated upon in earlier reports.

Ministry of Revenue

O.Reg. 950/80; O.Reg 1055/80. Retail Sales Tax Act.

These two Regulations are similar in purpose in that the first exempts United Nations Agencies from payment of retail sales tax and the second does the same for Local Service Boards established under The Local Service Boards Act, 1979.

Our immediate predecessor, in its Second Report 1980 at page 13 dealt with similar problems in connection with four Regulations each of which enacted a specific exemption from tax for a particular class of people.

The Committee now proposes to take a different approach to the problem and to make a distinction, as does the Act, between exemptions, rebates, and refunds.

The Retail Sales Tax Act provides for exemptions in several different ways. Section 5 names a considerable number of kinds of "tangible personal property" that are exempt. Section 6 exempts sales among members of the same family where no consideration is payable. Section 7 provides exemptions for others in a variety of circumstances and in a variety of ways.

However, this Committee cannot find any authority anywhere for the Lieutenant Governor in Council to make exemptions such as those specified in O.Reg. 950/80 and O.Reg. 1055/80 unless it be, as the Minister contends, clause 42(2)(f). This provision authorizes Regulations

(f) providing for relaxing the strictness of the Act relative to the incidence or collection of tax hereunder in special circumstances where, without relaxation, inconvenience or hardship might result.

Assuming that this provision was the authority for making the two classes of exemptions here in question and that the Lieutenant Governor in Council was of the opinion that special circumstances did in fact exist and that inconvenience or hardship might result if the exemptions were not made, the Committee thinks it would have been advisable to recite the facts as a preamble or recital in the Regulation and thus put on record that the requirements of the statute

had indeed been met. While we recognize that the Lieutenant Governor in Council is under no legal duty so to do, our recommendation is based upon the view that its adoption would remove a possible ground of attack.

O.Reg. 1010/80; O.Reg. 1096/80. Retail Sales Tax Act.

The first of these Regulations provides for a rebate of tax up to \$700 on new light trucks and vans purchased in certain circumstances. The second of the two remakes the schedule to the first. The schedule sets out the makes, models, etc. of light trucks and vans to which the rebate applies.

While the Committee is well aware of the several clauses of section 42 (some added as recently as last year) that authorize the Lieutenant Governor in Council to make Regulations providing for rebates of various kinds in varying circumstances, we have been unable to find any category into which to fit new light trucks and vans.

In this connection we have looked carefully at clauses 42(2)(f) and (g) which read:

(f) providing for relaxing the strictness of this Act relative to the incidence or collection of the tax hereunder in special circumstances where, without relaxation, inconvenience or hardship might result.

(g) providing for the rebate of tax in whole or in part owing to special circumstances, and prescribing the terms and conditions under which such rebates may be made.

If indeed the Ministry was relying upon either of these clauses to make the Regulations in question, the Committee is of the opinion that O.Reg. 1010/80, the principal Regulation, should have contained a recital to the effect that special circumstances did in fact exist which warranted the making of the Regulation.

We can do no more than emphasize the point we made above: whether or not such a recital is legally required is beside the point; we feel that such a practice in these cases would remove a possible ground of attack and would support the validity of the Regulation.

One other point remains to be dealt with in connection with O.Reg. 1010/80.

Section 5 reads:

5. Notwithstanding any provision to the contrary in the Act or the regulations, no interest shall be paid in respect of a rebate under this Regulation.

The Committee is of the opinion that the non obstante clause is ultra vires. We can find no authority in the Act or elsewhere to make section 5 prevail over the entire Act. The attempt to do so in our opinion has failed.

The Committee takes the orthodox view that delegated legislation is of its very nature subsidiary legislation; its function is to complement and supplement the Act that gives it birth. It should not override the Act and any attempt to do so, in our opinion, fails.

O.Reg. 1025/80. Ontario Pensioners Property Tax Assistance Act, 1980.

This Regulation adds three new sections (4,5 and 6) to the principal Regulation.

Section 4 provides a method of determining occupancy costs where an eligible person ceases to be eligible after mid-year. Section 5 does the same thing for the estate of a person who dies after mid-year. The Ministry argues strongly that these provisions are authorized by section 8 of the Act when read with clause 17(2)(h) of the Act. However, it may also be argued that sections 4 and 5 have the effect of amending the meaning of "occupancy cost" as defined in clause 1(h) for the purposes of the Act. The Committee believes that sufficient doubt exists to warrant bringing the matter to the attention of the House.

Section 6 is somewhat different. It provides a method of determining occupancy costs in cases where a person provides services instead of paying rent as, for example, an apartment superintendent. The Ministry points to clause 17(2)(g) of the Act as authority; it authorizes regulations "prescribing any condition that an applicant must meet prior to receiving a grant." The Committee cannot agree that section 6 prescribes a condition. The Committee believes it is an unauthorized amendment of the definition of "occupancy costs" which, to say the least, jeopardizes its validity.

Ministry of the Solicitor General

O.Reg. 782/80. Anatomy Act

The Committee notes that section 4 of this Regulation provides that section 3 of the Regulation, which increases a certain fee of local inspectors of anatomy and coroners, was to come into force 1 September 1980.

The Committee also notes that the Regulation was not filed until 24 September 1980.

We were unable to find any authority for this retroactive effect nor was the Ministry able to point to any. It would appear in all likelihood the situation was caused by inadvertent delays in the administrative process. This explanation, if correct, does not excuse the retroactive application of the Regulation where there was no statutory authority to do so.

The conclusion is that at least technically the Regulation, or perhaps only section 3, is open to attack on the ground of ultra vires. In any event, it clearly contravenes one of the guidelines approved by the House and set out in the Committee's Order of Reference.

Ministry of Transportation and Communications

O.Reg. 1070,1071, 1072/80. Highway Traffic Act.

These three Regulations were made under the authority of subsection 75(2) of the Act. Each designates a commencement date for "freeze-up" allowances in a defined part of Northern Ontario.

Whether the authority is adequate or not has been the subject of a difference of opinion between the Ministry and this Committee. See First Report 1978 at pages 41, 42; Second Report 1980 at page 14.

While we recognize that opinions may differ in the interpretation of statutes,

we have argued that where a difference of opinion does in fact exist, it should be resolved by appropriate remedial action.

The Committee is pleased to note that action has now been taken. The Highway Traffic Amendment Act, 1980, c.71, subsection 14(2) states categorically that a designation under subsection 75(2) is not a Regulation within the meaning of The Regulations Act. This amendment, which came into force on 9 January 1981 by Proclamation, takes the matter out of this Committee's competence.

IV - CONCLUSION

We have in this part of the Report completed the work of our predecessor which was brought to an end by the dissolution of the Legislature before that Committee had an opportunity to report to the House upon the Regulations filed in the fourth quarter of 1980. Some of these which were filed in late December did not, of course, and could not, appear in the Gazette until the middle of January of this year.

As a convenience to the Members of the House and others, we attach as an Appendix to this part a revised and updated summary of the recommendations of this Committee and its predecessor in respect of the 1980 Regulations.

V - APPENDIX

Summary of Recommendations Respecting the 1980 Regulations

1. That the commencement formula of O.Reg. 163/80 under The Provincial Offences Act, 1979 be avoided in the future (see Second Report 1980, p.6.).
2. That authority to designate the powers of officials be retained by the Legislature and not be delegated to the Lieutenant Governor in Council or anyone else as has been done in a number of cases including The Meat Inspection Act and The Non-Resident Agriculture Land Interest's Registration Act, 1980 (see Second Report, 1980, p. 11; First Report, 1981, p. 5).
3. That more attention be paid to the formulation of statutory provisions that authorize the making of Regulations in order to clarify and simplify the form and substance of these clauses (see Second Report 1980, p. 12).
4. That where an Act requires a condition to be met before a Regulation can be made, the Regulation should contain a recital to the effect that the condition has been met as required, for example in The Retail Sales Tax Act (see Second Report 1980, p. 13; First Report 1981, p. 10).
5. That care be taken to ensure that authority exists for making over-riding provisions such as is found in section 47 of O.Reg. 167/80 under The Ontario Unconditional Grants Amendment Act, 1979 and in section 5 of O.Reg. 1010/80 under The Retail Sales Tax Act (see Second Report 1980, p. 14; First Report 1981, p. 10).
6. That the persons involved in the preparation and processing of Regulations should not attempt to amend the authorizing Act by way of a Regulation without specific authority in the Act for so doing as was attempted for example, in O.Reg. 667/80 under The Ontario Pensioners Property Tax Assistance Act 1980 and in O.Reg. 1025/80 under the same Act (see Second Report 1980, p 15; First Report 1981, p 16).
7. That consideration should be given to amending The Public Commercial Vehicles Act to legitimate what appears to have become a practice of extending the term of licences of public commercial vehicles (see Second Report 1980, p. 15).

8. That all Ministries should observe the principle set out in Guideline (g):
Regulations should not have retroactive effect unless clearly authorized by statute.
(see Second Report 1980, pages 2 and 16-18; First Report 1981, p. 13).
9. That the Legislature should not delegate to the Lieutenant Governor in Council or to anyone else authority to create prohibitions in Regulations. Prohibitions should be provided for in the Act where they can be scrutinized and debated in the House and its committees (see First Report 1981, p.8).
10. Language that is descriptive only should not be relied upon as authority for the making of Regulations (see First Report 1981, p. 8).
11. That this Committee be empowered to sit between sessions of the House (see Second Report 1980, p. 19).

PART II

VI - INTRODUCTION

Our timing in planning to table this Report in the House before the House adjourns for its summer recess has made it possible to examine in detail, through Counsel, the Regulations filed in the first four months of 1981, that is, O. Reg. 1/81 to O. Reg. 264/81. The last forty-five of these were not and, of course, could not be published in The Ontario Gazette during the first four months; these were published in the first three weeks of May.

This being the situation, we may say that the Committee is as up to date with our primary responsibility as it is possible to be. It will be our policy in the future to be as up to date as possible in reporting to the House upon the Regulations as they are filed and published.

Needless to say, we would welcome at any time any comment any Member, or for that matter, anyone else may have with respect to any Regulation. Criticism from outside the Committee would not only be welcome but would be of assistance to us in the efficient discharge of our duties.

As in Part I, the Ministries responsible for the Regulations reported upon are arranged alphabetically.

The 13 Regulations which we find to be irregular in some respects and which we now bring to the attention of the House in this Part have already been brought to the attention of the Ministries and the Legal Officers of the Ministries by our Chairman and Counsel respectively as required by our Order of Reference and wherever possible, the point of view of the Ministry concerned has been discussed with our comments.

VII - O.REG. 1/81 to O.REG. 191/81

Statistics

During the first four months of the current year 264 Regulations were filed with the Registrar of Regulations pursuant to The Regulations Act. They occupy 421 pages of The Ontario Gazette and were made under the authority of some 91 Acts.

The following table shows the results:

<u>Authorizing Act</u>	<u>Number of Regulations</u>
Planning Act	48
Highway Traffic Act	28
Parkway Belt Planning & Development Act, 1973	15
Health Insurance Act	13
Environmental Assessment Act	10
Game and Fish Act	10
Milk Act	7
Retail Sales Tax Act	7
Local Services Boards Act	5
Health Disciplines Act, 1974	5
Ministry of Natural Resources Act, 1972	4
Local Roads Boards Act	4
Eight Acts each had	3
Fourteen Acts each had	2
Fifty-six Acts each had	1

In the same four-month period last year, 325 were filed; 272 in 1979; 319 in 1978; and 292 in 1977.

IRREGULAR REGULATIONS

Ministry of Agriculture and Food

O.Reg. 80/81. Milk Act

This Regulation, which authorizes the Canadian Dairy Commission to regulate the marketing within Ontario of milk products, came into force on 29 December 1980 but was not filed until 23 February, 1981. It replaced O. Reg. 615/79

which had been inadvertently revoked.

Neither the Committee nor the Ministry can find any statutory authority for the retroactive effect.

Ministry of Community and Social Services

O.Reg. 51/81. Family Benefits Act

This Regulation was filed with the Registrar of Regulations as required by The Regulations Act on the 4 February 1981. Section 2 of the Regulation states that the Regulation is to come into force on 1 February 1981.

Neither the Committee nor the Ministry can find any statutory authority anywhere for the retroactive effect.

Ministry of Consumer and Commercial Relations

O.Reg. 141/81. Ontario New Home Warranties Plan Act, 1976

This Regulation remakes subsections 8 (1) (2) (3) of O.Reg. 943/76. These subsections place a duty on homebuilders, as soon as a building permit is issued, to enrol the home in the Plan, etc.

The Committee can find no authority anywhere in the Act to authorize these provisions.

O.Reg. 239/81. Travel Industry Act, 1974

This Regulation raises a novel point in the life of this Committee and its predecessors. The point is a purely legal one and is, to the knowledge of the Committee, without precedent in the jurisprudence of this Province.

The Act was passed in 1974 and the principal Regulation under it was made in 1975 and a new provision added to it in 1976. This 1976 provision was validated

by statute later in 1976. Section 3 of The Travel Industry Amendment Act, 1976 reads:

"3. O.Reg. 491/76 shall be deemed to be valid for all purposes notwithstanding that it or any part of it would, but for this section, be invalid."

The Regulation now in question, O.Reg. 239/81, remakes O.Reg. 491/76 which was made and validated in 1976.

Does the statutory validation of O.Reg. 491/76 validate its replacement, O.Reg. 239/81?

The Ministry believes that it does and that everything is therefore in order. However, the Committee is of the opinion that sufficient doubt exists to warrant bringing the matter to the attention of the House.

Ministry of Health

O.Reg. 44/81. Health Disciplines Act, 1974

This Regulation was filed under The Regulations Act with the Registrar of Regulations on 2 February 1981. Section 2 of the Regulation provides that it shall be deemed to have come into force on 22 January 1981.

O.Reg. 131/81. The Public Health Act

This Regulation, which adds two duties to the Medical Officer of Health of a local board of health in connection with the immunization program of school children, came into force on 1 March 1981 but was not filed until 10 days later.

O.Reg. 210/81. Health Disciplines Act, 1974

This Regulation, which has to do with Parcost C.D.I, came into force on 1 April 1981 but was not filed until 6 April 1981.

The Committee has been unable to find any statutory authority for the retroactive effect of the above three regulations nor has the Ministry been able to help us in this regard. Therefore, it may be they could be challenged on the

ground that they are ultra vires.

Ministry of Natural Resources

O.Reg. 153/81. Endangered Species Act, 1971

Section 3 of this Act authorizes the Lieutenant Governor in Council to make regulations declaring any species of flora or fauna to be threatened with extinction by reason of (a) the destruction of its habitat, etc.; (b) over-exploitation; (c) disease; (d) predacity; (e) the use of chemicals; or (f) any other factor or factors considered relevant.

In O.Reg. 153/81 the small whorled pogonia was added to the list. However, nowhere in the Regulation was any one or more of the above reasons given for the addition. The Committee's point, albeit a small one, is that the Regulation would be much stronger if it had stated by way of a preamble or recital the reason why it was being made. The same point was made in the First Report June 1978 at page 43 in connection with O.Reg. 33/77 made under The Endangered Species Act, 1971 and was discussed in this report on pages 9 and 10 in connection with O.Reg. 950/80 and O.Reg. 1055/80 made under The Retail Sales Tax Act.

Ministry of Revenue

O.Reg. 91/81. Retail Sales Tax Act

This Regulation amends the principal Regulation by adding a new section 33 which particularizes with respect to telephone and telegraph services. Subsections 33 (2) and (3) state that:

"A purchaser is liable for the payment ... of the tax imposed by subsection 2 (3) of the Act....".

Subsection 2 (3) of the Act does, quite properly, impose the tax upon purchasers of telephone and telegraph services.

The Committee is of the opinion that it is redundant to repeat the substance of subsection 2 (3) of the Act in subsections 33 (2) and (3) of the Regulation.

Clarity must be achieved in some other way.

O.Reg. 140/81. Retail Sales Tax Act

This Regulation amends the principal Regulation by adding a new section 34 which provides a rebate for purchasers of motor vehicles who are permanently disabled.

There is ample authority in the Act by section 12 of The Retail Sales Tax Amendment Act, 1976 for the Minister of Revenue to make such a Regulation. However, the Regulation in question was made by the Lieutenant Governor in Council, probably under the authority of clause 42 (2) (g) of the Act. Clause (g), it will be noted, can only be used "in special circumstances".

In these circumstances our comments on pages 9, 10 and 21 of this Report apply with equal force. In short, the Committee recommends a recital in the Regulation stating the special circumstances that brought about the Regulation.

O.Reg. 177/81. Retail Sales Tax Act

This Regulation remakes the list of light trucks and vans to which a rebate may be applicable under O.Reg. 1010/80.

It is unnecessary here to do more than refer to the Committee's comments on pages 9 and 10 and 21 of this Report. The Committee recommends a recital.

O.Reg. 180/81. Race Tracks Tax Act

This Regulation adds a new section to the principal Regulation:

"4. Books of account, vouchers and minute books require to be maintained in accordance with sub-section 3 (2) of the Act shall be retained until written permission for the disposal or destruction thereof is given by the Minister."

The Committee is unable to find any authority anywhere for the making of this Regulation nor is the Ministry able to help in this regard.

This Regulation would be in our opinion, ultra vires if it were to be challenged in a court of law.

Ministry of Transportation and Communications

O.Reg. 206/81. Public Commercial Vehicles Act

This Regulation purports to have extended the term of public commercial vehicle licences that were due to expire on 31 March 1981 to and including the 30th day of April 1981 - a period of one month.

The Committee is of the opinion that it is doubtful whether adequate statutory authority exists for providing any extension to the life of these licences.

The same position was taken with respect to O.Reg. 240/78 (First Report 1979, page 25), to O.Reg. 192/79 (Second Report 1979, pages 4 and 5), and O.Reg. 223/80 (Second Report 1980, page 15) whose purposes were similar.

The Ministry of Transportation and Communications has taken the position that in its opinion sufficient statutory authority does in fact exist for making the extension in question.

This Committee, as did its predecessors, takes the position that where a difference of opinion exists, it is advisable to resolve the difference by remedial statutory action.

We are pleased to note that remedial action is now being taken to implement our recommendation. Bill 54 has been introduced in the House; it amends The Commercial Vehicles Act by authorizing the Lieutenant Governor in Council to make Regulations

"(da) prescribing or extending the period of time during which vehicle licences shall be in force."

This matter is therefore being brought to a satisfactory conclusion.

VIII - WORK IN PROGRESS

At meetings of the Committee on 21 and 28 May 1981, Arthur N. Stone, Q.C., Senior Legislative Counsel and a former Registrar of Regulations, and William R. Anderson, Q.C., Registrar of Regulations, attended and gave the Committee valuable views based upon their experience on a number of matters that were of interest to the Committee.

Section 22 of the Interpretation Act

One of these matters was section 22 of The Interpretation Act which was enacted by section 2 of The Statute Law Amendment Act, S.O. 1927, chapter 28. The question was: is this provision an anachronism that today serves no useful purpose and therefore ought to be repealed or, if it is of some value, ought it to be transferred to a more appropriate place in the statutes in as much as it has nothing to do with interpretation? It reads:

"22. The Lieutenant Governor in Council may make regulations for the due enforcement and carrying into effect of any Act of the Legislature and, where there is no provision in the Act, may prescribe forms and may fix fees to be charged by all officers and persons by whom anything is required to be done."

It appears that in practice today no reliance is put upon this provision. The opinion was that the general words of the opening part of the section were without strength and were of little, if any, practical worth and that if forms or fees might be required for the purposes of any particular Act, specific clauses would be included in the Act to authorize them.

After discussion, a resolution was adopted recommending that section 22 of The Interpretation Act be transferred to a more appropriate place in the statute books, in which connection The Regulations Act was mentioned.

Explanatory Notes

Another matter which was discussed was the use of Explanatory Notes accompanying the Regulations published in The Ontario Gazette as is done in Ottawa and Washington, D.C. While it was agreed that such a system would have great advantages, the fear was expressed that even the most skilfully

prepared note might inadvertently mislead the reader and so render such a practice dangerous.

After discussion, Mr. Anderson volunteered to study the matter this summer and to report his findings to the Committee in the Fall.

Editorial Style

A number of points concerning the style and form in which Regulations are published in The Gazette were discussed. The question was: could the way in which the Regulations appear in The Gazette be improved so as to make them more readily understandable by the reader? Could the main heading of each regulation be more descriptive of the contents, perhaps by expanding it or by the use of a subhead to pinpoint the contents?

Should the reference to the Act under which the Regulation was made be expanded to include more detail, such as the section, subsection, clause, etc. that authorize the Regulation, as is the practice now at Ottawa and was the practice at one time in Ontario?

These and other matters of a kindred nature were left to be dealt with administratively in the Office of the Registrar of Regulations where they will receive study and be the subject of discussion at staff meetings.

Reference Procedures

The question was: should the regulation clause of a Bill be referred on First Reading to this Committee with the duty of reporting back to the House on the merits of the contents of the clause?

After discussion, it was decided to take no action on the suggestion. The consensus was that the time of the House and its Committees did not permit the introduction of such an additional step in the progress of a Bill through the House and that the Committee of the House to which such a Bill would normally be referred would be quite capable of dealing with all clauses of the Bill including the Regulations clause.

IX - CONCLUSION

When the sittings of the Committee resume in the Fall we propose to undertake a study in depth of what has come to be known as "Notice and Comment" and also of what are called "Positive Resolutions" and "Negative Resolutions". The target of these studies would be the improvement of the procedures respecting delegated legislation in Ontario: can our system be improved by the introduction of these methods?

The Committee would welcome any input anyone would care to make on these subjects.

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Second Report 1981



1st Session 32nd Parliament
30 Elizabeth II

STANDING COMMITTEE
ON REGULATIONS AND OTHER
STATUTORY INSTRUMENTS

SECOND REPORT 1981

1st Session 32nd Parliament

30 Elizabeth II

The Honourable John M. Turner, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Regulations and Other Statutory Instruments has the honour to present its Second Report and commends it to the House.

A handwritten signature in dark ink, appearing to read 'Ernie Eves', with a stylized flourish at the end.

Ernie Eves, M.P.P.,
Chairman

Queen's Park
December 1981

MEMBERSHIP OF THE COMMITTEE

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DOUGLAS ARNOTT

Clerk of the Committee

LACHLAN R. MacTAVISH, Q.C.

Counsel to the Committee

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ORDER OF REFERENCE

Extract from the Votes and Proceedings of the Legislative Assembly of Ontario, Friday, April 24, 1981.

On motion by Mr. Wells, seconded by Mr. Miller.

Ordered - That the following Standing Committee be established for this Session, with power to examine and enquire into such matters as may be referred to it by the House, with power to send for persons, papers and things, as provided in Section 35 of The Legislative Assembly Act:

The Standing Committee on Regulations and Other Statutory Instruments is appointed for this Session to be the committee provided for by section 12 of The Regulations Act, and has the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (a) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) Regulations should be expressed in precise and unambiguous language.
- (d) Regulations should not have retrospective effect unless clearly authorized by statute.
- (e) Regulations should not exclude the jurisdiction of the courts.
- (f) Regulations should not impose a fine, imprisonment or other penalty.
- (g) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like).
- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

And that the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of The Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

And that the Committee shall have the power to employ counsel and such other staff as it considers necessary.

Extract from THE REGULATIONS ACT, R.S.O., 1970, c.410:

12.(1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

(2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.

(5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

I INTRODUCTION

First Report 1981: Comments

Your Committee tabled its First Report 1981 on June 16th last, a few days before the House adjourned for the summer recess.

In Part I of that Report (Pages 5-13) your Committee reported upon its findings with respect to the 391 Regulations that were filed under the Regulations Act in the fourth quarter of 1980, together with its comments and recommendations concerning the twelve Regulations that it found to be irregular in some respect.

It will be recalled that the late reporting of the 391 Regulations referred to above was caused by the dissolution of the House and the demise of the Committee. These events made it impossible for the Committee to carry out the notice procedures laid down in the Committee's Order of Reference. However, Counsel did discuss the questionable Regulations with the law officers concerned as soon as it was possible to do so and the present Chairman wrote to the respective Ministers as soon as he took office. Thus the spirit of the direction was implemented.

In addition, the Chairman wrote to the Minister of Housing requesting that he re-consider alternative procedures under the Planning Act to those now in effect with a view to lessening the filings under the Regulations Act. Your Committee is pleased to learn from the Minister of Municipal Affairs and Housing, The Honourable Claude B. Bennett, that he will act on our recommendation with respect to section 30 of the Planning Act and will propose amendments to exempt section 30 orders from the Regulations Act. These orders validate the use or division of land where the Planning Act has inadvertently been contravened; they are issued only upon request of the council of the municipality in which the land is situate; each order applies only to a single property and is registered on title. The process is usually initiated by the owner of the land when a cloud on title is discovered. Your Committee is convinced that, when the Minister's proposal is implemented, a desirable administrative result will ensue.

R.S.O. 1980 and R.R.O 1980

Since our last report, two significant events have taken place of which note should be taken: fresh revisions of the Statutes and of the Regulations have been published.

The Revised Statutes of Ontario, 1980 replaced the Revised Statutes of Ontario, 1970 on 1 August 1981. Therefore all Regulations made after that date were made and will continue to be made under R.S.O. 1980 in which the Acts have new chapter numbers and may well have different section numbers.

The second of these events is that the Revised Regulations of Ontario, 1980 replace the Revised Regulations of Ontario, 1970 on Monday, 16 November 1981. The effect of this is that all Regulations in R.R.O. 1970, plus all those that were filed between the cut-off date in 1970 and the cut-off date, 31 December 1980, are dead. The only living Regulations after mid-November are those in R.R.O. 1980 and those listed in the Schedule thereto, plus those filed after the cut-off date, that is, those filed during 1981 and thereafter.

II O.REG. 265/81 to O.REG. 591/81

General

In accordance with the instructions of the Committee and on its behalf, Counsel recently completed the examination in detail of the 327 Regulations filed in the second four-month period of the current year, that is, during May, June, July and August, 1981. These may be cited as O.Reg. 265/81 to O.Reg. 591/81.

This is, of course, the necessary groundwork in connection with your Committee's primary responsibility which is stated in section 12 of the Regulations Act (Page ii of this Report): "...to examine regulations with particular reference to the scope and method of the exercise of delegated legislative power..." In short, the Committee's main function is to serve as the watchdog of the House to find out if delegates of legislative power are doing only what the Legislature has authorized them to do.

Your Committee is therefore in a position to present to the House its second report in 1981. As we said in our First Report 1981 at Page 17: "It will be our policy to be as up-to-date as possible in reporting to the House upon the Regulations as they are filed and published".

Statistics

During the second four-month period (May, June, July, August, 1981) there were a total of 327 Regulations filed with the Registrar of Regulations pursuant to the Regulations Act. This total is much greater than the 264 in the first four-month period of the year. The Regulations in the second period now under review occupy 941 pages of The Ontario Gazette while the first period occupied only 421 pages. The substantial increase was largely due to two very lengthy Regulations under the Health Insurance Act (313 pages) and to three under the Game and Fish Act (195 pages).

The 327 Regulations now being considered were made under the authority of some 88 Acts. The following table shows the breakdown:

<u>Authorizing Act</u>	<u>Number of Regulations</u>
Planning Act	72
Highway Traffic Act	27
Crop Insurance Act	21
Environmental Assessment Act	17
Parkway Belt Planning and Development Act	17
Education Act	12
Game and Fish Act	11
Health Insurance Act	11
Milk Act	8
Farm Income Stabilization Act	7
Forest Fires Prevention Act	7
Farm Products Marketing Act	4
Live Stock and Live Stock Protection Act	4
Registry Act	4
Retail Sales Tax Act	4
Health Disciplines Act	4
Homes for the Aged and Rest Homes Act	3
Ontario Guaranteed Annual Income Act	3
Liquor Licence Act	3
Ministry of Natural Resources Act	3
18 Acts each had 2 regulations	36
49 Acts each had 1 regulation	49
	<hr/>
	327

Criticisms

Counsel has examined in detail these 327 Regulations and has advised the Committee that in his opinion only one is irregular. In the case of two others it is the Statutes under which they were made and not the Regulations themselves that require comment. The same criticism is made in each of these two cases. For convenience, these three are arranged alphabetically under the name of the responsible Ministry.

The one Regulation which in the Committee's opinion is in some way irregular and the two Regulations where the Committee is critical of the authorizing formula in the Acts concerned have been discussed by Counsel with the Registrar of Regulations and with the legal officers of the Ministries concerned. In addition, the Chairman has communicated the Committee's views to the responsible Ministers.

Ministry of Education

O.REG. 557/81. Teachers' Superannuation Act

Sections 1, 2 and 3 of this Regulation appear to be irregular in that they require the ballot papers for the election of certain members of the Commission and applications for superannuation, disability and dependents' allowances to be "in the form provided by the Commission," a function that is expressly given to the Lieutenant Governor in Council by paragraph 63.27 of the Act. Your Committee is of the opinion that the vires of these sections may be open to doubt because the exercise of this function by the Commission is, we believe, contrary to the intent of the Act which clearly delegates this function to the Lieutenant Governor in Council. Your Committee thinks that this wrongful exercise of authority, if that is what it is, might have serious consequences in the event that some day an election is challenged on the ground that the form of the ballot was provided by the Commission and not prescribed by the Lieutenant Governor in Council. This is, we believe, a risk that should not, and need not, be taken.

Ministry of Health

O.REG. 504/81. Health Discipline Act

Your Committee is satisfied that this Regulation is authorized by the Act. However, as we have mentioned on other occasions (see First Report 1978, pages 12 to 16), we are of the opinion that the requirements of the Statute contain a redundancy that ought to be eliminated in similar provisions in the future. The Health Disciplines Act contains a number of examples: Section 25 (Dentistry), section 50 (Medicine), section 74 (Nursing), section 96 (Optometry) and section 122 (Pharmacy), each read:

"Subject to the approval of the Lieutenant Governor in Council and with the prior review by the Minister, the Council may make regulations,..."

Surely the Minister, before submitting a proposed Regulation (prepared and recommended to him by the Council of the profession) to the Lieutenant Governor in Council must not only have reviewed its contents but also must have agreed with them. If any other meaning can be taken from the language as some allege, then the language is woolly. The Committee again recommends that requirements of this sort be eliminated.

Ministry of Transportation and Communications

O.REG. 400/81. Toronto Area Transit Operating Authority Act

Your Committee has no criticism of this Regulation as such. However, we question the language of the authorizing Statute. Subsection 10(1) reads:

"Subject to the approval of the Lieutenant Governor in Council and with the prior review of the Minister, the authority may make regulations,..."

This is the same point that we raised above and on other occasions. To repeat, your Committee is of the opinion that the phrase "and with the prior review of the Minister" is a redundancy as it is inconceivable that the Minister would ever present a proposed regulation to the Cabinet for approval without having reviewed it. This statutory requirement is, in the opinion of the Committee, a meaningless procedure that ought not to be used in future legislation.

III CONCLUSION

In presenting this, our eighth report, your Committee feels sure that somewhere somebody is listening and that our efforts, in co-operation with the officials engaged in the preparation of delegated legislation, are beginning to show results. We submit that the statistics support this conclusion emphatically -- only three out of 327 Regulations are cited in this report -- a significant decline in number from our earlier reports.

One of the factors that makes this result possible is that a number of Ministries are amending their legislation to remove the legislative strictures that this Committee has pointed out. For instance, in the current session of the House a half dozen or more Acts contain clauses designed to legitimate questionable exercises of delegated authority (see chapters 1, 4, 5, 11, 12 and 23, Statutes of Ontario, 1981).

Your Committee would be remiss if it did not take this opportunity to pay special tribute to the people in the Government service who participate in the preparation of Regulations, whose professional skills, experience and dedication result in a product that is second to none, in our opinion, in the English-speaking world. This report is conclusive evidence of that fact.

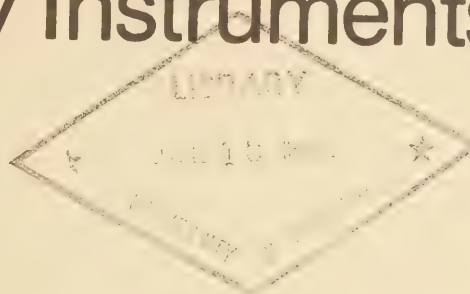
It is doubtless impossible to hope for perfection in a field as legalistic, technical and subject to quite legitimate differences of opinion as is the field of delegated legislation. Certainly enough success has been achieved, however, to cause one to think that the Committee is discharging its responsibility as the watchdog of the Legislature in bringing to the attention of the House the transgressions of those to whom legislative power has been delegated. In this way the Committee believes that its work is helping to improve the legislative process in Ontario to the betterment of all.

Your Committee plans to submit a report early in 1982 containing the results of our examination of the Regulations filed in the last four months of 1981 together with statistics for the full year compared with those of the previous three years.

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Standing Committee on Regulations and Other Statutory Instruments



First Report 1982

2nd Session 32nd Parliament
31 Elizabeth II

STANDING COMMITTEE
ON REGULATIONS AND OTHER
STATUTORY INSTRUMENTS

FIRST REPORT 1982

2nd Session 32nd Parliament

31 Elizabeth II

The Honourable John M. Turner, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Regulations and Other Statutory Instruments has
the honour to present its First Report and commends it to the House.

A handwritten signature in dark ink, appearing to read "Ernie Eves", with a long horizontal stroke extending to the left.

Ernie Eves, M.P.P.,
Chairman

Queen's Park
April 1982

MEMBERSHIP OF THE COMMITTEE

ERNIE EVES

Chairman

BILL BARLOW

MARION BRYDEN

ODOARDO DI SANTO

JIM GORDON

MICKEY HENNESSY

WILLIAM HODGSON

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RONALD G. VAN HORNE

DOUGLAS ARNOTT

Clerk of the Committee

LACHLAN R. MacTAVISH, Q.C.

Counsel to the Committee

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ORDER OF REFERENCE

Extract from the Votes and Proceedings of the Legislative Assembly of Ontario, Friday, March 12, 1982.

On motion by Mr. Wells, seconded by Mr. Miller (Muskoka),

Ordered - That the following Standing Committee be established for this Session, with power to examine and enquire into such matters as may be referred to it by the House, with power to send for persons, papers and things, as provided in Section 35 of The Legislative Assembly Act:

The Standing Committee on Regulations and Other Statutory Instruments is appointed for this Session to be the committee provided for by section 12 of The Regulations Act, and has the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (a) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) Regulations should be expressed in precise and unambiguous language.
- (d) Regulations should not have retrospective effect unless clearly authorized by statute.
- (e) Regulations should not exclude the jurisdiction of the courts.
- (f) Regulations should not impose a fine, imprisonment or other penalty.
- (g) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like).
- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

And that the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of The Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

And that the Committee shall have the power to employ counsel and such other staff as it considers necessary.

Extract from THE REGULATIONS ACT, R.S.O., 1980, c.446:

12.(1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.

(2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.

(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

(4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.

(5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

I INTRODUCTION

As we have pointed out in several of our earlier reports, the principal responsibility of this Committee is stated in section 12 of the Regulations Act (see page ii of this Report): "Every regulation (that is filed under the Act) stands permanently referred to (the Committee which)...shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes...".

While performing its other functions as diligently as the time available to it permits, your Committee is actively pursuing its statutory duty of examining the Regulations and reporting thereon to the House as expeditiously as possible.

Therefore, while this Report is necessarily entitled "First Report 1982", it deals exclusively with the Regulations filed in 1981. The First Report 1981 reported upon the Regulations filed in the first four-month period of last year; the Second Report 1981, those filed in the second four months; and this Report deals with the final four-month period. In this way, the three Reports cover the whole of the calendar year 1981.

In addition to reporting the Regulations filed in September, October, November and December, 1981 that the Committee finds upon examination to be irregular or questionable for one reason or another, this Report provides statistics for the whole of 1981 in order that comparisons may be made with earlier years.

Furthermore, this Report contains an updated summary of your Committee's recommendations with respect to the 1981 Regulations. (See Appendix, page 11.)

Owing to the fact that the working time of the Committee in the last few months has been entirely pre-empted by its consideration of the estimates of a number of Ministries, the normal program of the Committee was, of necessity, suspended. It may be that the Committee can resume its normal program of work during the current Session of the House.

II STATISTICS: 1981

This chapter records the statistics with respect to the Regulations filed under the Regulations Act in the whole of the year 1981.

It also contains comparisons of the 1981 figures with those of the previous four years.

Total Number of Regulations Filed

1981	-	884
1980	-	1,141
1979	-	962
1978	-	1,007
1977	-	975

It will be seen that 1981 showed a dramatic drop in the number of Regulations filed. In fact, 884 was the lowest number in the five-year period for which we have statistics. In contrast, the previous year, 1980, had the highest number.

It would appear that this sudden decline was due in large part to the efforts made by the Government during 1980 to have the ministries and agencies revise and update their respective Regulations in order to have all in order for the general decennial revision of the Regulations then under way.

Looking at the figures for the five-year period 1977 to 1981, we can estimate that in 1982 there will be some 900 to 1,000 Regulations filed.

Of the 884 Regulations filed last year, 605 amended existing Regulations, 221 were new, 41 revoked and remade existing Regulations, and 17 revoked Regulations. The ratio is about the same as in other years.

The Regulations filed in 1981 occupy 1,952 double-column pages in The Ontario Gazette compared with 2,132 in 1980, 2,568 in 1979, 1,965 in 1978 and 1,797 in 1977.

The following table specifies the seven Acts under whose authority more than 20 Regulations were filed in 1981 and compares these figures with those of previous years.

<u>Authorizing Act</u>	<u>Number of Regulations</u>				
	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Planning Act	309	263	208	238	157
Highway Traffic Act	79	88	92	82	78
Parkway Belt Planning and Development Act	57	67	56	37	41
Game and Fish Act	17	23	25	50	32
Health Insurance Act	25	31	34	50	31
Crop Insurance (Ontario) Act	37	37	18	39	28
Milk Act	24	41	22	34	25

It will be seen that by far the greatest number in each of the past five years was under the Planning Act and we can assume that this was the case in earlier years as well. Your Committee has watched this situation with interest and has commented upon it in earlier Reports (see Second Report 1978, page 13; First Report 1979, pages 2-6; First Report 1980, page 3; and more particularly, Second Report 1981, page 1).

When the Committee's recommendation to exempt section 30 orders under the Planning Act (R.S.O. 1970, c.296) from the Regulations Act is implemented (which we are pleased to know is under consideration by the Minister of Municipal Affairs and Housing), the Committee is convinced that an unneeded duplication in administrative procedures will be eliminated.

It will be seen also that the Highway Traffic Act is consistently in second place in the above table. The number per year of Regulations under this Act may be expected to decline in the future because of a number of recent amendments to the Highway Traffic Act which have been made as a result of the recommendations of this Committee. This remedial action has brought about a decided improvement in the administrative procedures of this Ministry and thus has effected an improvement in our system of dealing with delegated legislation.

III O.REG. 592/81 to O.REG. 884/81

General

In accordance with the instructions of the Committee, Counsel has completed the examination in detail of the Regulations filed in the last four months of 1981 and has submitted his comments thereon for the consideration and conclusions of the Committee.

Here follows your Committee's comments with respect to the seven Regulations which we feel obliged to bring to the attention of the House. These, as has been our practice, are arranged alphabetically by ministry. Four lack statutory authority for their retroactivity; in the case of two, we are not critical of the Regulations themselves but we are of the language of the statutory authority under which they were made; and in one case, which is admittedly controversial, your Committee is of the opinion that the form of the Regulation could be improved by a preamble or recital to bring it into line with a condition precedent in the authorizing statute.

We may add that these three grounds for reporting Regulations are not new; they have been the subject of comments in earlier reports of this Committee. We see no reason to change our earlier views on these points or to repeat our earlier comments on these matters.

Ministry of Community and Social Services

O.Reg. 614/81. Homes for the Aged and Rest Homes Act

Section 1 of this Regulation amends the formula for determining operating and maintenance costs of homes. Section 2 provides that the Regulation "shall be deemed to have come into force on April 1, 1981"; it was filed on September 17, 1981. Neither the Ministry nor the Committee can find any statutory authority for the retroactive effect; we, therefore, conclude that there is none. We can do no more than draw the attention of the Ministry to Guideline (d) adopted by the House on December 13, 1979: "Regulations should not have retrospective effect unless clearly authorized by statute."

O.Reg. 615/81. Charitable Institutions Act

Section 1 of this Regulation amends the formula for determining the daily costs of residential care and extended care services. Section 2 provides that the Regulation "shall be deemed to have come into force on April 1, 1981"; it was filed on September 17, 1981. Neither the Ministry nor the Committee can find any statutory authority for the retroactive effect; we therefore conclude there is none. Our comments with respect to O.Reg. 614/81 on page 5 apply with equal strength here.

O.Reg. 787/81. Child Welfare Act

This Regulation, which redefines "net expenditures" and the formula for determining the cost of services for each child in care, was filed on November 20, 1981. Section 2 provides that the Regulation "shall be deemed to have come into force on February 17, 1981." Neither the Ministry nor the Committee can find any statutory authority for the retroactive effect. Our comments with respect to O.Reg. 614/81 on page 5 are equally applicable here.

Ministry of Health

O.Reg. 665/81 s.73. Health Disciplines Act

O.Reg. 667/81 s.24(1). Denture Therapist's Act

There is adequate authority in the respective Acts for the making of these Regulations. However, we mention them because of the language in the sections of the Acts that authorize the making of Regulations: "with prior review by the Minister". This is the same point that your Committee raised with the Ministry of Health and other ministries on other occasions. See First Report 1978, pages 12 to 16, and Second Report 1981, pages 5 and 6.

There is no need to repeat here our comments in the reports mentioned above. However, we feel it is relevant to quote from a letter from the former Minister of Health to our Chairman respecting O.Reg. 504/81 on the same point. He wrote in part:

"The words 'and with prior review by the Minister' were included deliberately. Their intention was to ensure that the Ministry would have a role in the development of any Regulations by the Council of a College rather than becoming involved only at the point where the Council has already decided upon a proposed Regulation and is now submitting it to the Lieutenant Governor in Council for approval.

I should add that the Ministry of Health has found the words 'with prior review by the Minister' to be of beneficial effect; the result has been that various Councils do consult with the Ministry before formulating and adopting proposed Regulations.

Having a regard for your Committee's opinion that 'the present examples might well be eliminated' and that the words in question 'ought not to be repeated in future legislation', my Ministry will certainly consider whether the words in question are still needed; if it is concluded that the words are no longer necessary, we will be pleased to give effect to the Committee's views."

Your Committee thanks the Minister for his letter and adds that if the words in question have served a useful purpose in the preparation of Regulations, that fact should override any views the Committee may have as to the phrase being redundant in its context or obscure as to its purpose. That being the case in the Ministry of Health, we take the view that the Ministry should proceed as it has been doing, without regard to the views of this Committee. However, we think it advisable for the Ministry to note the views of the Ministry of Transportation and Communications with respect to the Toronto Area Transit Operating Authority Act (S.O. 1974, c.69), and O.Reg. 400/81. Subsection 9(1) of that Act contains language exactly the same as discussed above.

The Minister of Transportation and Communications in his letter to the Chairman of this Committee writes:

"I agree that the phrase 'and with prior review by the Minister' is redundant inasmuch as the Regulations proposed by the Authority would, in any event, be submitted by myself as the Minister named in that Act and be submitted to the Lieutenant Governor in Council on my recommendation assuming that I was in agreement with the proposal after I had reviewed it. The process would be the same whether or not the phrase appeared in the Act.

The point which you have raised appears to be a matter of drafting style and not of substance. The presence of the phrase in the statute does not create any defect in Regulations made pursuant to the Act and the deletion of the phrase would not change the Regulation-making process in any way.

I agree that this phraseology should not be repeated in the future but I do not feel that the time of the House would be well used if I were to bring forward an amendment to simply improve the style of the subsection."

We include these extracts in the Report in order to show the variety of the ministerial responses to our comments. We respect the positions taken by them in the same helpful spirit that the Committee brought the matter forward in the first place; we are content to let it rest with the caveat that, if anyone still feels the phrase in question to be helpful administratively, they try to state the intent in clearer language.

Ministry of Revenue

O.Reg. 755/81. Retail Sales Tax Act

This Regulation authorizes rebates up to \$700 on the purchase price of certain motor vehicles. The authority for this appears to be clause 45(2)(f) of the Retail Sales Tax Act (S.O. 1972, c.21) which requires "special circumstances" to exist before the power can be exercised. Why not recite the special circumstances in a preamble or a recital in the Regulation? See First Report 1981, pages 21, 22.

O.Reg. 847/81. Motor Vehicle Fuel Tax Act

Section 1 of this Regulation, which redefines certain classes of carriers of fuel who, with certain exceptions, need not register, was made under the authority of clause 29(2)(e) of the Motor Vehicle Fuel Tax Act (R.S.O. 1970, c.248). The Regulation was filed on December 21, 1981 and by section 3 it was deemed to have come into force on November 17, 1981. We can find no authority for this retroactive effect. See pages 5 and 6 of this Report for other examples of retroactivity without statutory authority, contrary to Guideline (d).

IV CONCLUSION

It is significant to note that of the nearly 300 Regulations under review in detail in this Report, your Committee has found only seven that it feels should be brought to the attention of the House: three under Acts administered by the Ministry of Community and Social Services, two in the Ministry of Health and two in the Ministry of Revenue.

This favourable result causes the Committee to pay tribute, not only to the Ontario system under which delegated legislation is processed, but also, and more particularly, to the Registrar of Regulations and his staff and the officials in the various ministries and agencies who are responsible for the preparation of Regulations. It is their experience, skill and dedication in this highly technical and legalistic field that has made the current enviable position possible. The Committee is pleased to bring this situation to the attention of the House.

Assuming that your Committee will be returning this Session to its normal program of work, it is planned to proceed with its long-projected study of Notice and Comment. We think it timely to emphasize, as we did in our First Report 1981, that we will welcome any input any Member of the House, or for that matter, anyone else, may care to make on any aspect of this subject.

The Committee will, of course, continue to perform its statutory duty of monitoring all Regulations as they are filed and published and to report any irregularities to the House just as soon as it is possible to do so.

As noted in our First Report 1981 at page 13 and in the Second Report 1981 at page 7, the Legislature is quietly enacting a growing body of remedial legislation that implements the recommendations of this Committee. While each of these many amendments is of relatively small importance, the total constitutes a significant improvement in the system of dealing with delegated legislation in Ontario.

APPENDIX

The following are Summaries of the Recommendations of your Committee as a result of its examination of the 1981 Regulations:

1. "Regulations should be in strict accord with the statute conferring the power..." as Guideline (b) puts it. See First Report 1981, pages 22, 23; Second Report 1981, page 5.
2. "Regulations should not have retrospective effect unless clearly authorized by statute". This is Guideline (d) adopted by the House. It has been breached a number of times. See First Report 1981, pages 18, 19, 20 and pages 5, 6 and 9 of this Report.
3. That where the authorizing provision of the Act contains a condition precedent to the exercise of the delegated power, it would be advisable to include a statement by way of a preamble or recital in the Regulation to the effect that the condition has been met. See First Report 1981, pages 9, 21, 22, and page 9 of this Report.
4. That the phrase "and with prior review by the Minister" which may be found in a number of Acts, for example, Health Disciplines Act, Toronto Area Operating Authority Act should not appear in future Legislation. See Second Report 1981, pages 5 and 6, and pages 6, 7 and 8 of this Report.
5. Section 22 of The Interpretation Act should be transferred to a more appropriate place in the statutes, perhaps in The Regulations Act. See First Report 1981, page 24.

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Standing Committee on Regulations and Other Statutory Instruments



Second Report 1982

2nd Session 32nd Parliament
31 Elizabeth II

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The Honourable John M. Turner, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Regulations and Other Statutory Instruments has
the honour to present its Second Report and commends it to the House.



Ernie Eves, M.P.P.,
Chairman

Queen's Park
July 1982

MEMBERSHIP OF THE COMMITTEE

ERNIE EVES

Chairman

BILL BARLOW

MARION BRYDEN

ODOARDO DI SANTO

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Counsel to the Committee

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- (c) Regulations should be expressed in precise and unambiguous language.
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(5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

I O.REG.1/82 to O.REG.224/82

INTRODUCTION

This Report brings the House as up-to-date as is practicable with respect to the regulations filed with the Registrar of Regulations under the Regulations Act; it covers the months of January, February, March and April, 1982.

The Committee considers the detailed examination of the regulations to be the most important feature of it's work. This "watch dog" aspect is statutory; section 12 of the Regulations Act provides in part that it is the responsibility of the Committee:

...to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes...

In the four-month period covered by this Report, 224 regulations were filed, each of which has been examined in detail on behalf of the Committee by Counsel. The method of examination developed by Counsel is as follows:

- First. The form, style and content of each regulation is examined.
- Second. If the regulation in hand is an amending regulation (as most are), the parent regulation and all relevant amending regulations are checked.
- Third. The statute under which the regulation in hand was made and all relevant amendments to the statute are checked. These are then examined in a search for the specific statutory authority for the making of the regulation in hand.
- Fourth. The nine basic principles adopted by the House (see page i of this Report) as guidelines to be observed by those concerned with the preparation and processing of regulations are then applied to the regulation in hand to ensure that they have been observed.

Fifth. The results of this examination are then recorded and reported to the Committee with Counsel's recommendations.

The Committee is satisfied, as we have reported in earlier Reports, that the regulation system as it is now being administered in Ontario is fulfilling the intent and purpose of the House as evidenced in the Regulations Act. In fact, the Committee believes it may be said that its efforts are having a salutary effect as the number of regulations on which it is necessary to report to the House for irregularity of one kind or another goes down from year to year. Of the 224 regulations covered in this Report, the Committee sees fit to report on only three, each of which came into force retroactively without any statutory authority for so doing.

As required by the Committee's Order of Reference, Counsel has discussed each of these regulations which have been found to be irregular with the directors of the legal branches in the various ministries concerned and the Chairman of the Committee has written to each of the Ministers to bring the matters to their attention.

STATISTICS

As reported above, there were 224 regulations filed under the Regulations Act in the first four-month period of 1982. They were made under the authority of 80 different Acts and occupy 487 double-column pages in The Ontario Gazette.

The following table shows these results and compares their totals with the totals of the first quarters of previous years.

<u>Authorizing Act</u>	<u>Number of Regulations filed in First Quarter 1982</u>
Planning	47
Crop Insurance	20
Highway Traffic	18
Game and Fish	13
Environmental Assessment	6
Milk	6
Parkway Belt Planning	6
Farm Products Marketing	5
Environmental Protection	4
Executive Council	4
Ministry of Natural Resources	4
Three Acts each had 3	9
Fourteen Acts each had 2	28
Fifty-four Acts each had 1	<u>54</u>
TOTAL	224

This total compares with 264 in 1981, 325 in 1980, 272 in 1979, 319 in 1978 and 292 in 1977.

The Acts that appeared in the list of four or more regulations last year and that do not appear this year are the Health Insurance Act, Retail Sales Tax Act, Local Services Boards Act, Health Disciplines Act, and Local Roads Boards Act.

The Acts that appear this year for the first time in the group having filed four or more regulations are the Crop Insurance Act, Farm Marketing Act, Environmental Protection Act, and the Executive Council Act.

REGULATIONS CONSIDERED IRREGULAR

In accordance with the practice that the Committee established in previous Reports, each of the regulations being reported will be discussed under the ministry that is responsible for the administration of the Act under which it was made, arranged alphabetically.

1. Ministry of Community and Social Services

Family Benefits Act

O.Reg.71/82

This regulation raised the sum to be paid toward the monthly requirements of residents of homes. This is clearly authorized by clause 20(j) of the Act.

Section 2 of the regulation provides for it to come into force on 1 February 1982. The regulation was not filed, however, until 5 February 1982.

Neither the Committee nor the Ministry can find any statutory authority for the retroactive effect. The Committee must conclude that there is none.

2. Ministry of Revenue

Assessment Act

O.Reg.144/82

We understand from the Ministry that this regulation was designed to correct some editorial errors in R.R.O. 1980, Reg. 67, which provides for a number of assessment areas and assessment regions. It was clearly authorized by clause 2(1)(a) of the Assessment Act.

The regulation was filed on 11 March 1982, and by section 4 it "shall be deemed to have come into force 16 November 1981", which is the day on which the Revised Regulations of Ontario, 1980, came into force.

Neither the Committee nor the Ministry can find any statutory authority for the retroactive effect. This contravenes Guideline (d) adopted by the House and set out in the Committee's Order of Reference (see page i of this Report).

However, it may be assumed that the regulation stands and has achieved its purpose unless it is held to be invalid by a court of competent jurisdiction.

3. Ministry of Health
Mental Health Act
O.Reg.207/82

This regulation fixes the amount of the remuneration and allowance for expenses of members of review boards and advisory review boards which may be appointed for psychiatric facilities established under sections 30 to 34 of the Act. The regulation is clearly authorized by clause 65(1)(k) of the Act.

Section 2 of the regulation provides for it to come into force on 1 April 1982. It was not filed until 6 April 1982.

Neither the Committee nor the Ministry can find any statutory authority for this retroactivity. The assumption must be made that there is none.

II MISCELLANEOUS

PUBLIC COMMERCIAL VEHICLES ACT

O.Reg.233/80, purportedly made under the authority of the Public Commercial Vehicles Act, and administered by the Ministry of Transportation and Communications, extended by one month (from 31 March 1980 to 30 April 1980) the term of public commercial vehicle licences. See Second Report 1980, page 15.

Similar benefits were given in 1978 and 1979. Neither the Committee nor the Ministry was able to find any statutory authority under which the Lieutenant Governor in Council could make any of these extensions and so the matter was reported to the House with the recommendation that the Act should be amended to legitimate the practice (see Second Report 1980, page 22, item 8).

The Committee is pleased to note that the recommendation has been acted upon and the problem remedied by adding a new clause to section 37 of the Act which enables the Lieutenant Governor in Council to make regulations prescribing or extending the period of time during which P.C.V. licenses shall be in force. See Statutes of Ontario 1981, c.71, s.15(1).

Consequently, this year's extension (O.Reg.84/82) was perfectly in order.

NOTICE AND COMMENT

At it's sittings this spring, the Committee has been chiefly concerned with the subject commonly known as "Notice and Comment" with a view to assessing it's potentialities in one form or another for adoption in Ontario.

This study is continuing. Suffice it to report now that the thrust of the testimony to date has varied greatly - from an advocate of complete adoption modeled on the American federal system to those who recommend a development of the present Ontario system of providing for appropriate Notice and Comment procedures in specific statutes such as the Occupational Health and Safety Act. It would appear that the Committee will not be in a position to conclude its consideration of this matter and present its recommendations to the House until later this year.

STYLE OF THE REGULATIONS AS GAZETTED

The Committee is continuing its practice of seizing every opportunity to improve the Ontario system of dealing with delegated legislation, including the style of regulations as they appear in The Ontario Gazette. For example, would it be practical and helpful to the reader for each regulation to be accompanied by an explanatory note along the lines of the present practice at Ottawa? Can the method of inserting the headings of the regulations in the Gazette be improved by the editors so as to inform the reader more quickly as to the purpose and content of the regulations? Would it be advantageous for the specific statutory authority under which a regulation is made to be cited? Consideration of these and other matters which might improve the presentation of regulations in the Gazette is continuing.

MINISTERS' REPLIES TO FIRST REPORT 1982

In the First Report 1982, the Committee felt obliged to report seven regulations to the House for one reason or another: three in the Ministry of Community and Social Services, two in the Ministry of Health and two in the Ministry of Revenue.

The Committee has had replies from the three ministers concerned, each of whom concurs in our comments as to the irregularities found in their respective regulations.

The Honourable Frank Drea, Minister of Community and Social Services, stated in his letter with respect to the three reported unauthorized retrospective regulations that he will introduce legislation when an opportunity presents itself to authorize the making of regulations with retroactive effect in appropriate cases.

PROCLAMATIONS

So far in its history, the Committee has only been concerned with regulations. It may be that at some time some consideration should be given to expanding its work to include statutory proclamations. The common example of such an instrument is:

This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

It may be that examination by the Committee of these proclamations and their preparation and processing would result in recommendations to improve the system. The Committee would welcome the comments of Members of the House and others on this subject.

III CONCLUSION

This Report contains the lowest number of regulations that the Committee has found to be irregular.

Two conclusions appear to flow from this fact. One is that officials throughout the Government service and its agencies, boards and commissions who are involved in the delegated legislation process are paying attention to the reports of the Committee as they appear from time to time and as a result are improving their skills and the end product, namely, the regulations. The second conclusion is that this watch-dog function of the Committee would appear to be well worth the effort in that it serves as the "eyes" of the Legislature in constantly observing the operation of the regulatory system in Ontario and so is able to report transgressions to the House.

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Standing Committee on Regulations and Other Statutory Instruments

Third Report 1982



2nd Session 32nd Parliament
31 Elizabeth II

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The Honourable John M. Turner, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Regulations and Other Statutory Instruments has
the honour to present its Third Report 1982 and commends it to the House.

Ernie Eves, M.P.P.,
Chairman

Queen's Park
December 1982

MEMBERSHIP OF THE COMMITTEE

ERNIE EVES

Chairman

BILL BARLOW

MARION BRYDEN

ODOARDO DI SANTO

JIM GORDON

MICKEY HENNESSY

WILLIAM HODGSON

TERRY JONES

VINCE KERRIO

J. EARL McEWEN

ALLAN McLEAN

RONALD G. VAN HORNE

LYNN MELLOR

Clerk of the Committee

LACHLAN R. MacTAVISH, Q.C.

Counsel to the Committee

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ORDER OF REFERENCE

Extract from the Votes and Proceedings of the Legislative Assembly of Ontario, Friday, March 12, 1982.

On motion by Mr. Wells, seconded by Mr. Miller (Muskoka),

Ordered - That the following Standing Committee be established for this Session, with power to examine and enquire into such matters as may be referred to it by the House, with power to send for persons, papers and things, as provided in Section 35 of The Legislative Assembly Act:

The Standing Committee on Regulations and Other Statutory Instruments is appointed for this Session to be the committee provided for by section 12 of The Regulations Act, and has the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (a) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) Regulations should be expressed in precise and unambiguous language.
- (d) Regulations should not have retroactive effect unless clearly authorized by statute.
- (e) Regulations should not exclude the jurisdiction of the courts.
- (f) Regulations should not impose a fine, imprisonment or other penalty.
- (g) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like).
- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

And that the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of The Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

And that the Committee shall have the power to employ counsel and such other staff as it considers necessary.

Extract from THE REGULATIONS ACT, R.S.O., 1980, c.446:

12. (1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.
- (2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.
- (3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.
- (4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.
- (5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

I INTRODUCTION

This Report is designed to be a follow-up of our Second Report 1982; it will deal with the regulations filed with the Registrar of Regulations pursuant to the Regulations Act from April 12th, 1982 to September 30th, 1982. This will leave the last quarter of the current year to be dealt with in our First Report 1983 which, of course, cannot be made ready until some time in February or March of next year.

In addition, this Report will deal with some miscellaneous matters in Chapter IV.

The Committee had hoped to report this Fall its findings, conclusions and recommendations on Notice and Comment. Regrettably, other business of the Committee has intervened which has necessarily delayed the finish of our work on this subject.

Our opposite number in Ottawa, the Standing Joint Committee on Regulations and Other Statutory Instruments of the Parliament of Canada, in conjunction with the Commonwealth Parliamentary Association, will be hosting the second Commonwealth Conference of Delegated Legislation Committees at Ottawa in mid-April 1983. It is expected that Notice and Comment will have a prominent place on the agenda of this meeting, as it did in the first conference at Canberra, Australia, in 1980.

II STATISTICS

This chapter records the statistics with respect to the regulations filed under the Regulations Act in the first nine months of the calendar year 1982. Statistics for the whole of the year will appear in our First Report 1983; comparisons with earlier years will be included in that Report.

The following table lists the six Acts under whose authority more than twenty regulations were filed in the first three quarters of the current year:

<u>Authorizing Act</u>	<u>Number of Regulations</u>
Planning Act	145
Highway Traffic Act	53
Crop Insurance Act (Ontario)	27
Parkway Belt Planning & Development Act	27
Game and Fish Act	26
Health Insurance Act	24

As usual, the Planning Act heads the list by a considerable margin (see First Report 1982, page 4). It is to be noticed that Bill 159 which contains thoroughly revised and updated planning legislation and now stands on the Order Paper for Third Reading is of more than passing interest to this Committee. If the recommendations of this Committee in the earlier Reports are adopted, as we understand they will be, a considerable reduction in the number of regulations made under the Planning Act can be expected.

The Highway Traffic Act also, as usual, is an easy winner of second place in tables of the kind above. However, a trend downwards is beginning to be noticeable due to a number of amendments to the Act made as a result of this Committee's recommendations and the progressive legislative programme of the Ministry of Transportation and Communications.

These matters are being brought to the attention of the House because they serve to illustrate the fact that the Committee's recommendations are being implemented in some instances, thus effecting relatively small but nevertheless important improvements in Ontario's system of dealing with delegated legislation.

III O. REG. 225/82 TO O. REG. 644/82

General

In accordance with our practice, Counsel has on our instructions and on the Committee's behalf carefully examined in detail the 419 regulations filed with the Registrar of Regulations pursuant to the Regulations Act from April 12th to September 30th, 1982.

The Committee continues to believe, as has been mentioned in earlier Reports, that its continuous vetting of the regulations is having a beneficial effect on their quality. This is evident from the fact that the number of regulations which we find necessary to report to the House for irregularities continues to go down from year to year.

As will be seen later in this Report, only five out of the more than 400 regulations filed are being reported: three for retroactivity without statutory authority and two for being made by an unauthorized person.

In accordance with the requirements of the Committee's Terms of Reference, Counsel has discussed each of the regulations which appeared to him to be irregular for one reason or another with the directors of the legal branches of the various Ministries concerned, while the Chairman of the Committee has written each of the Ministers in these Ministries. This system enables the Committee to learn the point of view of the people responsible for the preparation of the regulations in question, thus resulting in a fairer assessment of the matters in question.

Irregular Regulations

Each of the regulations which the Committee considers to be irregular for one reason or another and therefore a matter that must be reported to the House will now be discussed under the name of the Ministry that is responsible for the administration of the Act under which the regulation was made, arranged alphabetically.

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

Family Benefits Act

O. Reg. 314/82 and O. Reg. 551/82

These two regulations are similar and can be considered together conveniently. The purpose of each was to raise the sum to be paid toward the monthly requirements of residents of homes - a matter that is clearly authorized by clause 20(j) of the Act.

However, section 2 of each of these regulations brings the respective increases into effect retroactively and neither the Committee nor the Ministry can find any statutory authority anywhere for so doing.

We must therefore conclude that these two regulations contravene Guideline (d) adopted by the House and applicable to those involved in the process of making regulations (see page i of this Report).

Before leaving our comments on these two regulations, the Committee recalls that a similar situation occurred earlier this year with respect to O. Reg. 71/82 which we reported to the House in our Second Report 1982 at page 9. In this connection the Minister of Community and Social Services stated in a letter to the Chairman of this Committee dated April 13th, 1982, "when an opportunity presents itself, amendments will be made to the legislation to clarify the authority to make regulations retroactively...". The Committee expresses the hope that such an opportunity may present itself in the near future.

Three similar unauthorized regulations within a period of less than nine months is not an enviable record, even though each of these instances resulted in a benefit to those residents of homes who come within the reach of the increases made by the regulations in question.

We recommend that, if instances of this kind are to occur in the future, the Act be amended to permit retroactive regulations to be made.

MINISTRY OF HEALTH

Health Disciplines Act

O. Reg. 613/82

The effect of section 1 of this regulation is to increase to \$4.37 the maximum fee of pharmacists for filling prescriptions of a particular kind. Section 2 increases this maximum to \$4.48. Subsection 3(1) makes the first of these increases effective on August 1st, 1982. Subsection 3(2) makes the second increase effective on October 1st, 1982. The regulation was filed under the Regulations Act on September 10th, 1982.

In these circumstances, the Committee must conclude (and the Ministry concurs) that the first of these two increases was retroactive for more than a month without any statutory authority for the retroactivity.

While it may be said that the regulation confers a benefit upon pharmacists, the Committee strongly recommends that as these increased fees must in the long run be paid by the public, they should not be imposed retroactively or otherwise without the clear authorization of the Legislature.

MINISTRY OF REVENUE

Ontario Guaranteed Annual Income Act

O. Reg. 231/82

This regulation, made by the Lieutenant Governor in Council, presents an unusual sort of irregularity.

It effected two things:

- (1) it provided that a Notice of Objection under subsection 9(3) of the Act "shall be in Form 1", and

- (2) it revoked Regulation 706 of R.R.O. 1980, which prescribed the form of Notice of Appeal under the Act.

The authority for making regulations under this Act is of two kinds, both in section 17. Subsection 1 authorizes the Minister of Revenue to make certain kinds of regulations, including prescribing the forms that are required for the purposes of the Act. Subsection 2 authorizes the Lieutenant Governor in Council to make certain other kinds of regulations.

It would appear clear that section 1 of the regulation (prescribing Form 1) should have been made by the Minister, not by the Lieutenant Governor in Council.

Section 22 of the Interpretation Act does not help to regularize the regulation. It reads:

22. The Lieutenant Governor in Council may make regulations for the due enforcement and carrying into effect of any Act of the Legislature and, where there is no provision in this Act, may prescribe forms and...

In this case, as we have seen, there is provision in the Ontario Guaranteed Annual Income Act for the Minister to prescribe the forms and so renders the Interpretation Act inapplicable.

The Committee has no alternative but to report this regulation as being irregular in that subsection 1(1) should have been made by the Minister where the authority lay, and not by the Lieutenant Governor in Council.

Retail Sales Tax Act
O. Reg. 303/82

This regulation has a defect similar to that of O. Reg. 231/82 reported above.

Section 2 of this regulation, which was made by the Minister of Revenue, authorizes the delegation of certain powers and duties of the Minister of

Revenue under the Act to certain officials of the Ministry--a quite common provision that can be found in many Ontario statutes. The authority in this instance is to be found in clause 45(2)(b) of the Act. However, it clearly authorizes the Lieutenant Governor in Council, not the Minister, to make such a regulation.

The Committee does not think that the situation can be rectified by invoking the general words of subsection 45(1) and (2) which read:

"45. (1) For the purpose of carrying into effect the provisions of this Act according to their true intent and of supplying any deficiency therein, the Lieutenant Governor in Council may make such regulations as are considered necessary and advisable.

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

(b) authorizing or requiring the Deputy Minister or any other officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act;"

We consider that the true intent of the Act is expressed in clause 45(2)(b).

The Committee has no alternative but to report this regulation as being irregular in that it should have been made by the Lieutenant Governor in Council where the authority lay, and not by the Minister.

The Committee finds it difficult to understand how these two regulations could have been processed through the Ministry and the Office of the Registrar of Regulations without the Law Officers involved being aware of the clear provisions of the Act.

The Committee therefore recommends that appropriate administrative action be taken to ensure that such irregularities are not likely to be repeated on future occasions.

IV MISCELLANEOUS

Legislation Authorizing the Delegation of Ministerial Powers and Duties

Perhaps the Committee will be excused for drawing the attention of the various Ministries that have legislation of this kind to what appears to be an inadvertant omission in the language of the "standard" provision which might frustrate a proposed delegation in certain circumstances.

The usual provision reads:

The Lieutenant Governor in Council may make regulations authorizing or requiring the Deputy Minister or any officer of the Ministry of to exercise any power or perform any duty conferred or imposed upon the Minister by this Act.

It may well be that certain powers and, more likely, certain duties of the Minister are to be found in the regulations. In this situation under the usual statutory provision set out above, the delegation could not be made. The remedy is, of course, quite simple. Add the words "or the regulations" at the end of the provision.

Internal Governmental Procedures

The Committee has heard testimony from a number of Governmental officials, among them Arthur N. Stone, Q.C., Senior Legislative Counsel; W. R. Anderson, Q.C., Registrar of Regulations; A. S. Tucker, Q.C., Legislative Counsel, as well as several directors of legal branches of ministries, who described the methods followed by them in the preparation of regulations.

From the testimony we have heard and from our observations during our tour of the the Office of the Registrar of Regulations, the Committee is satisfied once again to report to the House that the system in vogue in Ontario under the Regulations Act is, over all, a first-class system and that it is staffed by competent and experienced people.

However, the Committee has found one place in which we are of the opinion that an improvement can and should be made. In the drafting of a proposed regulation there are usually a number of discussions between a representative of the Ministry concerned and a representative of the Registrar of Regulations as to the substance, form and style of the proposed regulation. At the end of these meetings the parties agree, or agree to disagree, as to the *vires* and all the other features of the proposed regulation. It is at this point in the development of the measure that we recommend the parties note in their respective files their views respecting the draft and, more particularly, write down in detail the legislation under which they believe the regulation is authorized. We find that at the present time this requirement, if it may be said to be a requirement, is not being followed. In almost all cases, this vital information is not recorded and therefore cannot be learned by subsequent authorized inquirers such as Deputy Ministers, Ministers, the Cabinet Committee on Legislation, the Cabinet itself, or this Committee.

Headings of Regulations in The Ontario Gazette

On page 7 of our Second Report 1982 we raised a number of questions with respect to the format applicable to regulations as they are published in The Ontario Gazette. One of these questions was: Can the method of inserting the headings of each regulation in the Gazette be improved by the editors so as to inform the reader more quickly of its purpose and content?

Pursuing this point a step further, the Committee is of the opinion that the answer to the question is a positive "yes".

An example will show where the system can be improved. O. Reg. 600/82 is one of more than fifty amending regulations made in the first nine months of this year under the authority of the Highway Traffic Act. The heading of this regulation in the Gazette reads:

Highway Traffic Act
O. Reg. 600/82
Signs
Made - September 2nd, 1982
Filed - September 3rd, 1982

There are, of course, a great many kinds of signs dealt with in the regulations under the Highway Traffic Act. O. Reg. 600/82 amends only section 1 of Regulation 486 of R.R.O. 1980, which deals only with speed limit signs. Why this important fact is not indicated in the heading, is more than this Committee can comprehend. Why not "Signs: Speed Limit" or "Signs (Speed Limit)"? Surely some such addition would preserve the integrity of the system in vogue and yet would communicate the subject matter quickly to the reader and thus save him the time and effort of looking up section 1 of Regulation 486 of R.R.O. 1980.

The Committee therefore recommends that more information than is now contained in the Gazette headings be given along the lines suggested above.

V SUMMARY OF RECOMMENDATIONS

1. O. Reg. 314/82, O. Reg. 551/82, O. Reg. 613/82

That Guideline (d), which states that regulations should not have retroactive effect unless clearly authorized by statute, be complied with. If regulations of the kind cited above are to continue to be made, that the relevant Act be amended to authorize retroactivity with, of course, appropriate limitations included (pages 4, 5).

2. O. Reg. 231/82, O. Reg. 303/82

That administrative action be taken to ensure that regulations be processed through the authorized channels (pages 5, 6, 7).

3. Internal Governmental Procedures

That administrative action be taken to ensure that the precise statutory reference under which a proposed regulation is authorized be recorded in the files of the persons responsible for its preparation (pages 8, 9).

4. Headings of Regulations in The Ontario Gazette

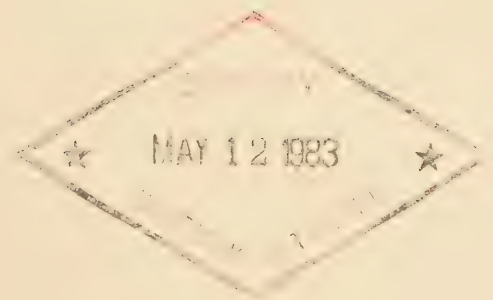
That more information be given in the headings of regulations as published in the Gazette to assist the reader in gaining a quick understanding of the subject matter of the Regulation (pages 9, 10).

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Standing Committee on Regulations and Other Statutory Instruments

First Report 1983



2nd Session 32nd Parliament
32 Elizabeth II

STANDING COMMITTEE
ON REGULATIONS AND OTHER
STATUTORY INSTRUMENTS

FIRST REPORT 1983

2nd Session 32nd Parliament

32 Elizabeth II



LEGISLATIVE ASSEMBLY

The Honourable John M. Turner, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Regulations and Other Statutory Instruments has
the honour to present its First Report 1983 and commends it to the House.

A handwritten signature in dark ink, appearing to read "Ernie Eves".

Ernie Eves, M.P.P.,
Chairman

Queen's Park
February 1983

MEMBERSHIP AND STAFF OF THE COMMITTEE

ERNIE EVES

Chairman

BILL BARLOW

Vice-Chairman

MARION BRYDEN

ODOARDO DI SANTO

JIM GORDON

MICKEY HENNESSY

WILLIAM HODGSON

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Clerk of the Committee

LACHLAN R. MacTAVISH, Q.C.

Counsel to the Committee

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I INTRODUCTION

General

The Committee feels that it would be appropriate now to record its history, including whatever information is still available as to the reasons for its establishment, its development and the results of its work over the years.

Portions of this history have appeared in our reports from time to time but a complete overview has not been done.

McRuer Report

Although informal discussions had taken place from time to time by persons involved in the legislative process in Ontario as to the need for a committee such as ours, the first substantial recommendation for such a development came in 1968 in the First Report of the Royal Commission Inquiry into Civil Rights. The Commissioner was the Honourable J. C. McRuer, Q.C., then recently retired as Chief Justice of the High Court of Justice, the trial branch of the Supreme Court of Ontario.

The Commission at page 368, of Report No. 1, Volume 1, wrote:

"If the recommendation that regulations be automatically referred to a Scrutiny Committee of the Legislature, which we will make in the next chapter, is adopted, the Committee will be immediately informed of all regulations and with the assistance of Counsel these regulations will be reviewed within the terms of reference of the Committee. The Legislature will then be informed of those requiring its attention."

And then, in the next chapter, Chapter 26, at page 370, Mr. McRuer stated:

"It is imperative that some effective form of review by or on behalf of the Legislature should be established. The volume of subordinate legislation is very great; it is frequently of more

practical importance to the individual than the general framework of statutes under which the regulations are passed. It is a primary function of the Legislature to make the laws, and it is responsible for all laws it makes or authorizes to be made. A failure of the Legislature to find some specific place in the legislative calendar for supervision of subordinate legislation is, in our view, a dereliction of duty on its part and a failure to protect the fundamental civil rights of the individual."

Strong words to be sure! Again at page 373 the Commission wrote:

"The experience in both the United Kingdom and Australia shows that much improvement in the form and operation of regulations is obtained by the mere existence of the committee. Ministers and officials are sensitive to its possible criticisms."

Committee Authorized

The recommendation of the McRuer Report was soon implemented by the Regulations Amendment Act, 1968-69, S.O. 1968-69, c. 110, which added a new section 12 to the Act (set out in full as Appendix B to this report). In short, the amendment called for the establishment of a standing committee on regulations to which "every regulation stands permanently referred" and whose principal function would be to examine the regulations "with particular reference to the scope and method of the exercise of delegated legislative power."

For reasons that are not clear at this time, the first three committees established under the 1968-69 legislation did not report. In all probability each was composed of thirteen members.

The next committee met in April 1971 with A. J. Belanger (Prescott-Russell) as chairman. It held at least eleven meetings in April, May and June of that year at which a number of specific regulations were examined and other particular matters considered.

The 1972 committee, the third, held four meetings in the Spring of that year under the chairmanship of Mr. Belanger and discussed a number of subjects, including regulations, provincial fines and the Ontario Food Terminal, including a tour of its facilities.

The fourth committee did, however, make a report on April 3rd, 1973. The Journal of the House reads:

"Mr. Maeck from the Standing Regulations Committee presented the Committee's report which was read as follows:-

Your Committee recommends to the Legislature that in view of the Committee's limited Statutory Powers, that Regulations be referred to the Committee from time to time for review and examination of their merits."

Why such a report was thought to be necessary having regard to section 12 of the Regulations Act, what its purpose was and what, if anything, was done about it is unknown to the present committee. Our surmise is that nothing more was done and that the matter died along with the committee at the end of the Session.

The fifth, sixth and seventh committees were born and died without leaving any record of holding any meetings or making any reports.

The eighth committee was established on March 31st, 1977, composed of eight members with John Williams (Oriole) as chairman. It held two meetings but ended suddenly with the dissolution of the House.

At the First Session of the 31st Parliament, on June 28th, 1977, the ninth committee was established composed of eight members with John Williams again chairman. However, the Session prorogued in December without any report from the committee.

The Second Session took similar action on March 6th, 1978 and appointed a committee of eight with John Williams again chairman. This was the tenth committee - but it was different from its predecessors. It went to work, appointed counsel and held eleven public meetings, followed by three in camera meetings and on June 15th it tabled a comprehensive fifty-five page report which brought about a 10-page debate in Hansard on November 20th. Mr. Williams and Mr. Lawlor took leading parts. This was followed by the committee's Second Report 1978 which was tabled in the House on December 14th.

The next committee, the eleventh, presented two reports, the first in June 1979 and the second in November of that year. The latter, after a debate of some length, was adopted by the House.

The succeeding Session, the fourth, set up the twelfth committee, again under the active chairmanship of John R. Williams. This committee also presented two reports to the House, the first on June 5 and the second on December 11th, 1980.

The Committee was established again in the First Session of the 32nd Parliament in the Spring of 1981, this time composed of twelve members (instead of the previous eight). This committee elected Ernie Eves (Parry Sound) as chairman, his predecessor, Mr. Williams, having been made the Parliamentary Assistant to the Minister of Revenue. This committee presented two reports, the first on June 16th, which was debated on October 22nd and adopted. The second report was presented on December 15th, 1981.

The Second Session of the 32nd Parliament saw a committee of twelve members with Mr. Eves again the chairman. This, the fourteenth committee has succeeded in presenting four reports, the first on May 3rd, the second on July 7th, the third on December 14, 1982 and then this report in February 1983. This committee has submitted its recommendations respecting Notice and Comment in Chapter IV of this report, a subject of on-going interest to parliaments throughout the English speaking world.

During its life from its inception to the present, the committee has had three names: the Standing Regulations Committee from 1969 to 1976, the Standing Statutory Instruments Committee from 1977 to 1979, and its current name from 1980 to the present.

A number of Clerks from the Office of the Clerk of the Legislative Assembly have served the committee, including G.F.L. Sulkke, Alex McFedries, Andrew Richardson, A. Smirle Forsyth, Douglas Arnott and Lynn Mellor, the present incumbent.

From 1978 to the present, the committee has had as its Counsel Lachlan R. MacTavish, Q.C., formerly Senior Legislative Counsel and at one time Registrar of Regulations, Ministry of the Attorney General.

Commonwealth Parliamentary Association

In 1980, the Commonwealth Parliamentary Association held a Conference on Delegated Legislation Committees at Canberra, Australia. Some sixteen jurisdictions attended, including Ontario, represented by the then chairman of the committee, John Williams, M.P.P.

The second conference is being held at Ottawa, April 9 to 15, 1983. Papers will be presented on "Can Parliament Control the Regulatory Process?"; "The Scrutiny of Delegated Legislation from the Opposition Viewpoint"; "Notice and Comment Procedures for Proposed Delegated Legislation". Panel discussions will be held on "Government Responses to Committee Reports: Impact of Committee Reports on Government Departments and Agencies"; "Problems in Scrutiny of Regulations reflecting International Agreements or Decisions reached at International Conferences and at National Conferences designed to promote Uniformity of Laws in a Federal System: the "Ponsonby Rule"; "Should there be review of Subordinate Legislation on its Merits: How and by Whom?" "How much Policy or Indication of Policy should appear in Delegated Legislation as opposed to Parent Legislation?" These agenda items indicate the nature of the work of the Conference. Sessions will be held in the Senate Chamber and in Room 200, West Block, Parliament Buildings, Ottawa.

II STATISTICS:

1982 REGULATIONS VIS-A-VIS EARLIER YEARS

During the calendar year 1982 a total of 857 regulations were filed with the Registrar of Regulations pursuant to the Regulations Act. The following table presents the totals for the past six years.

1977	975
1978	1,007
1979	962
1980	1,141
1981	884
1982	857

It will be seen that each of the last two years has shown a dramatic drop in the total number of regulations filed. Whether this trend will continue through the current year and into the future remains to be seen. The committee makes no forecast; however, it would appear that the figure must stabilize at some point in the near future, depending in some measure on the quantity of legislation enacted by the Legislature that authorizes the making of regulations. It may well be that the legislators will scrutinize such delegations with greater care than has been the case in the past.

Of the 857 regulations filed last year more than half were amending regulations, that is, they amended existing principal regulations. Less than half were new principal regulations. About forty of the total revoked existing regulations, principal and amending.

The 1982 regulations occupy 2021 double-column pages in The Ontario Gazette. The following table shows a remarkably constant volume over the past six years.

1977	1,797
1978	1,965
1979	2,568
1980	2,132
1981	1,952
1982	2,021

The next table names the seven Acts under whose authority more than twenty regulations were filed in 1982 and in the previous years for which we have figures.

<u>Authorizing Act</u>	<u>Number of Regulations Filed</u>					
	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Planning Act	309	263	208	238	157	87
Highway Traffic Act	79	88	92	82	78	71
Parkway Belt Planning & Development Act	57	67	56	37	41	36
Crop Insurance Act (Ontario)	37	37	18	39	28	36
Game & Fish Act	17	23	25	50	32	30
Health Insurance Act	25	31	34	50	31	29
Milk Act	24	41	22	34	25	21

It will be seen that by far the largest number of regulations filed in each of the past six years were made under the Planning Act. We believe that it would be correct to assume that the Planning Act was number one in earlier years as well. The committee has had a watchful eye on this situation and has commented upon it annually in reports since 1978.

In our First Report 1981 at page 4 we remarked upon the likelihood of Government legislation to implement the committee's recommendation to exempt what are known as "section 30 Orders" from filing and publication under the Regulations Act, thus affecting an improvement in the administration procedures of the Ministry of Municipal Affairs and Housing by eliminating an unnecessary form of public notice.

The committee is pleased to note that a new Planning Act was recently passed by the House (1983, chapter 1). We understand that this revised Act has taken section 30 Orders out of the scope of the Regulations Act. If this is so, we can look forward to a lowering of the number of regulations to be filed under the Planning Act, 1983. There were 48 of these section 30 Orders filed in 1981 and 52 in 1982.

It will also be seen that the Highway Traffic Act has held second place throughout the period for which we have statistics. However, as the committee has commented upon in earlier reports, there appears to be a downward trend in the number of regulations filed under the Highway Traffic Act. This is due, we believe, to a number of amendments to the Act based upon recommendations of this committee which have eliminated the need to file and publish certain types of regulations. These amendments have resulted in a decided improvement in the administrative practices of the Ministry of Transportation and Communications and in the Ontario system of dealing with delegated legislation.

Those persons who are interested in more detail with respect to the regulations will find much information in the "Table of Regulations filed under the Regulations Act on the 31st day of December 1982", prepared by the Registrar of Regulations and available in his office, the Legislative Library, etc.

III REGULATIONS FILED IN OCTOBER, NOVEMBER, DECEMBER, 1982: O. REG. 645/82 to O. REG 857/82

General

On the committee's instruction and on its behalf Counsel has examined in detail the 213 regulations filed in the fourth quarter of last year and has reported to us on his findings. These we have considered and adopted with thanks to Counsel for performing a very onerous task quickly.

As we have stated in earlier reports, it is clear that our efforts in this, our primary function, that of vetting the regulations as they are filed under the Regulations Act and reporting those that we consider to be irregular for one reason or another to the House, as soon as practicable, is having a beneficial effect on their quality. This is evident because the number of regulations that the committee considers must be reported to the House goes down from year to year. We feel that this process is continuing to benefit the officials of the Government and others who are involved in the regulatory process.

As will be seen later in this chapter, only five regulations out of the 213 covered by this report are mentioned particularly as being the subject of criticism by this committee. Of these five, the legislation that authorizes one of them is criticized - not the regulation; one of them contains a redundant and perhaps misleading heading; two of them concern the same matter - a mistake in filing; and one has, in our opinion, an ultra vires section.

As the terms of reference of the committee require, counsel has discussed each of the items which appear to him to require explanation with the directors of legal branches of the various ministries concerned, while the chairman of the committee has written each of the ministers in these ministries inviting comment. This system enables the committee to learn the point of view of the people responsible for the matters in question, thus resulting in a fair assessment of the problems before this report is finalized.

Each of the five regulations mentioned above will now be considered in the same format that we have used in recent reports, that is, under the name of the ministry that is responsible for the administration of the Act under which the regulation was made, arranged alphabetically.

Ministry of the Attorney General

Surrogate Courts Act

O. Reg. 845/82

This regulation has an unusual heading which reads:

AMENDMENTS to Regulation 925 of the Revised Regulations of Ontario, 1980, being the Rules of Practice and Procedure of the Surrogate Court, including the Appendix of Forms and the Tariffs of Fees, made by the Rules Committee on the 28th day of September, 1982, under the Judicature Act, to be effective on the 1st day of November, 1982.

The regulation contains a number of changes in specific rules followed by a number of forms for use in the surrogate courts.

The regulation was made on September 28th, 1982 but was not filed until December 24th.

The question that the committee finds intriguing and impossible to answer with certainty is the meaning and intent of the end phrase of the heading "to be effective on the 1st day of November, 1982".

If it was the intention of the Rules Committee to make the regulation retroactive from December 24th, 1982, the day of filing, to November 1st, 1982, then it has failed in its purpose because the Rules Committee has no statutory authority for making anything retroactive. Furthermore, subsection 1(2) and section 9 of the Interpretation Act make it abundantly clear that headings do not form part of the regulation; they are inserted for convenience of reference only.

If on the other hand, the words in question were not intended to make the regulation retroactive, what was intended?

The committee's enquiries indicate that the words in question appeared through perhaps a lack of proper communication in the period between the time the regulation was made and when it was filed. Fortunately, the heading, if it may be called that, is a redundancy of no importance.

In the opinion of this committee the regulation came into force on December 27th, the day on which it was filed.

In making these comments we are fully aware of sections 1, 5 and 9 of regulation 899 of the Revised Regulations of Ontario, 1980. These read:

1. The Registrar shall advise upon and assist in the preparation of regulations.

5. In publishing regulations, the Registrar may correct clerical, grammatical or typographical errors and for the purpose of obtaining a uniform mode of expression, may alter the numbering and arrangement of any provision and may make such alterations in language or punctuation as are of an editorial nature.

9. Nothing in section 1 or 5 applies to or affects the rules made by the Rules Committee established under the Judicature Act.

Perhaps it would be gratuitous on our part to suggest that it might be helpful on occasion for the Rules Committee to seek the guidance of the Registrar of Regulations in matters of form.

Ministry of Community and Social Services

General Welfare Assistance Act

O. Reg. 656/82

Subsection 4(2) of the General Welfare Assistance Act sets out the powers and duties of municipal welfare administrators. It reads:

4(2) The municipal welfare administrator shall receive applications for assistance and shall determine the eligibility of each applicant for assistance, and where the applicant is eligible, shall determine the amount of the assistance and direct provision thereof, and he may from time to time vary such an amount so determined.

Clause 14(p) of the Act reads:

14. The Lieutenant Governor in Council may make regulations,

(p) prescribing additional powers and duties of ... (naming certain classes of officials, including regional welfare administrators).

This provision clearly authorizes the making of O. Reg. 656/82, the substantive part of which reads:

2a The regional welfare administrator may receive applications for assistance and shall determine the eligibility of each applicant for assistance and, where the applicant is eligible, shall determine the amount of assistance and direct provision thereof, and he may from time to time vary any amount so determined.

It will be noted that the powers and duties of regional welfare administrators set out in the regulation are exactly the same as those of municipal welfare administrators set out in the Act.

The committee is strongly of the opinion that powers as important as those given regional welfare administrators by the regulation should not have been delegated by the Legislature to the Lieutenant Governor in Council or anyone else. In other words, the powers of municipal welfare administrators were quite properly set out under the Act; the same should have been done in the case of regional welfare administrators. Important powers, such as the case here, should be created in the statute by the Legislature and not left to be created by a delegated authority.

The position the committee now takes in this instance is the same as that taken by us in earlier reports. For example, First Report 1981 at pages 6 and 7. See also Recommendation 2 on page 15 of that report, which reads:

2. That authority to delegate the powers of officials be retained by the Legislature and not be delegated to the Lieutenant Governor in Council or anyone else as has been done in a number of cases including The Meat Inspection Act and The Non-Resident Agriculture Land Interest's Registration Act, 1980 (see Second Report, 1980, p. 11; First Report, 1981, p. 5).

The committee now endorses the above recommendation and commends it to the Ministry to consider whenever amendments to the General Welfare Assistance Act are being proposed.

Ministry of Health

Health Disciplines Act

O. Reg. 823/82 and O. Reg. 851/82

The committee draws these two regulations to the attention of the House as an unusual exercise of the established Ontario practice under the Regulations Act.

The unusual feature of O. Reg. 823/82 was that it became a regulation inadvertently, having been filed with the Registrar of Regulations only because of a clerical error in the Ministry.

As it happened, the error came to light only a few days after the filing, at which time the Ministry took immediate steps to remedy the error by filing an appropriate revoking regulation (O. Reg. 851/82). Since the revoking regulation came into effect even before the original regulation was published in The Gazette, the text of the original regulation was omitted from The Gazette in favour of a simple note that the original regulation had been filed in error and that the effect of the inadvertent filing was already terminated by the revoking regulation.

Ministry of RevenueFuel Tax Act, 1981O. Reg. 772/82

This Act replaced the Motor Vehicle Fuel Tax Act in an updated and revised form in 1981. Like most tax statutes it is complex and much is left to be legislated upon in the regulations under the Act.

Section 21 of the Act authorizes the Minister to make refunds of a particular kind and sets out the rules governing not only these refunds but all refunds.

Subsection 30(1) of the Act authorizes the Lieutenant Governor in Council to make regulations:

- (g) providing for the refund in special circumstances of the whole or any part of the tax imposed by this Act and prescribing the terms and conditions under which such refund may be made; and

Subsection 30(2) authorizes the Minister to make regulations:

- (d) providing for the refund of any tax or any portion thereof paid under this Act to any purchaser or class of purchasers and prescribing the records and material to be furnished upon application for a refund;

All of this legislative authority respecting refunds has, in the opinion of the committee, brought about a state of confusion and complexity that must irritate taxpayers and administrators alike. Why the principles governing refunds could not have been dealt with completely in section 21 of the Act, with section 30 authorizing supplementary regulations, this committee does not know.

However that may be, it may explain in part the difficulties the committee has with O. Reg. 772/82, which, inter alia, provides for refunds in certain circumstances. Section 11 authorizes the Minister to make refunds to

collectors and importers of sums remitted by them but which turn out to be uncollectable from the purchaser of the fuel. This analysis may be over simplified, but the significant feature here is that the refund is made to the middleman in the transaction and the committee can find no statutory authority in the three extracts quoted above or elsewhere to authorize such a provision in the regulation. Therefore, we have no alternative but to report the irregularity to the House. In our opinion, section 11 would, if challenged in a court of competent jurisdiction, be held to be ultra vires. However, as the provision provides a refund of tax there is little or no likelihood of an attack in the courts - and until that should occur, section 11 and the rest of the regulation are perfectly good and effective.

In any event we ask the Ministry of Revenue to review the refund provisions of the Act and the regulation in the light of our comments with a view to introducing clarifying legislation when it is possible to do so.

IV NOTICE AND COMMENT

Background

To the persons who are knowledgeable on delegated legislation and the many different systems that have been developed by parliaments around the world, there is a feeling of dissatisfaction with the status quo in at least one area which is now generally referred to as Notice and Comment.

While most parliaments, including that of the Province of Ontario, have over the years built adequate and efficient systems for dealing with the preparation, making, central filing and publication of regulations, they have never had or have abolished procedures for informing the public of proposed delegated legislation and affording interested persons and organizations an opportunity of making their views - for or against - known to the proposing authorities.

United Kingdom

Great Britain had a system of Notice and Comment in operation from 1893 to 1946 when it was abolished on the ground that it had never worked satisfactorily and that informal discussions had become virtually a constitutional convention rendering a formal requirement redundant.

Australia

Similar publication was required in Australia before World War I but was abolished during the war emergency and has not been re-established.

United States of America

In the United States, federally and in some states, notice is required to be given of intention to make regulations, containing either a draft of the proposed regulation or a statement as to the substance of it. This notice is usually given in an official publication such as the Federal Register, and all interested parties must be given a reasonable opportunity to make representations. However, the American federal system is constantly being criticized for what are called regulatory excesses of one kind or another. Two remedial bills are currently before Congress. One of these which is designed to reduce the powers of regulatory agencies and reduce both the number and cost of new regulations was recently approved by the United States Senate without a dissenting vote. See the New York Times, March 25, 1982 and the Congressional Quarterly, April 3, 1982 at page 740 and June 5, 1982 at page 1,320.

Canada

The Parliament of Canada through its Standing Joint Committee on Regulations and other Statutory Instruments has been studying Notice and Comment for some years. It reported to Parliament in July 1980 in favour of a mandatory Notice and Comment procedure being introduced in Canada covering all subordinate legislation. This recommendation has not been acted upon.

Although Canada does not have a general statute requiring Notice and Comment, it does, on appropriate occasions, provide in particular statutes Notice and Comment procedures.

It is interesting to note that on January 11th this year the Government of Canada announced a new program under which federal departments and agencies would be required to give early notice of proposed regulatory initiatives. This program was recommended to the Government by, among others, the Economic Council of Canada and the Standing Joint Committee

on Regulations and other Statutory Instruments. The Treasury Board President announced that beginning in May early notice of proposed changes in federal regulatory activities will be given through publication, twice yearly, of regulatory agendas. In making the announcement Mr. Gray said:

"These agendas will give the private sector notice of proposed regulations before final decisions are made and while alternatives are still being considered. I hope this will stimulate constructive consultation and lead to more effective and less burdensome regulation. Publication of notice in agendas, therefore, is not intended to indicate that the Government will take precisely the action proposed but is an invitation to an exchange of views on the problems and the solutions being contemplated. We are responding to concerns expressed by the private sector and Parliament that the Government regulates by surprise, without consulting people about proposals which will effect them."

As this early warning system has not yet had time to operate, this committee will reserve judgement as to its chances of being effective until its worth has been established. Suffice it to say that we would be pleasantly surprised if such a program can maintain a meaningful momentum for long.

Ontario

Ontario does not have, and never has had, any general statute requiring any form of Notice and Comment for proposed regulations. In this respect it is in the same position as the Parliament of Canada. Like Ottawa, Ontario has established the practice of incorporating Notice and Comment procedures in particular statutes in which the need for Notice and Comment procedures is evident and for which appropriate procedures can be provided. For example, see Occupational Health and Safety Act, section 22; Industrial Standards Act, sections 8-12; Planning Act, section 35.

The Committee

This committee has had Notice and Comment on its agenda for some time but unavoidable delays due to the time of the committee being pre-empted by the House to work on estimates and private bills has postponed consideration of the subject from time to time.

The committee has had referred to it by Counsel a broad range of the literature on Notice and Comment covering all points of view. A list of some of these is set out as Appendix C to this report.

In addition, we have had the advantage of having before us an array of experts whose testimony has been of great value to us, especially as many points of view and recommendations have been expressed. Perhaps it would be of interest to list these gentlemen in the order of their appearance before the committee.

L. R. MacTavish, Q.C., Counsel to the Committee.

W. R. Anderson, Q.C., the present Registrar of Regulations.

Arthur N. Stone, Q.C., the present Senior Legislative Counsel and a former Registrar of Regulations.

David J. Mullan, Faculty of Law, Queen's University.

Harry S. Bray, Q.C., and K. E. Boast, Q.C., Vice Chairman and Legal Advisor, respectively, of the Ontario Securities Commission.

Paul Hess, Q.C., Director of the Legal Services Branch of the Ministry of Labour, Ontario.

Honourable J. C. McRuer, formerly Chief Justice of the High Court of Justice, Supreme Court of Ontario; Commissioner of the Royal Commission Inquiry into Civil Rights.

G. C. Eglington, Counsel to the Standing Joint Committee of the Parliament of Canada on Regulations and other Statutory Instruments.

Peter J. Dey, Q.C., Chairman designate, Ontario Securities Commission.

With the exception of Professor Mullan who recommended a general statute with great enthusiasm, the witnesses were in favour of a continuation of the present practice in Ontario, that is, the insertion in specific appropriate statutes of Notice and Comment procedures designed for the particular needs of each particular statute.

However, the consensus had one important caveat, namely, that efforts should be made to widen the application of Notice and Comment procedures to more statutes than is presently the case. Furthermore, ministries and agencies, boards and commissions, such as the Ontario Securities Commission, who now practice voluntarily Notice and Comment procedures should move to incorporate their practices in their legislation and so replace what is now a voluntary system with a statutory duty.

The committee, having perused the extensive literature on the subject and heard the testimony of the knowledgeable persons who appeared before us, now recommend to the House that in our opinion the practices with respect to Notice and Comment presently in effect in Ontario continue but with more emphasis upon incorporating suitable procedures in appropriate Acts.

If our recommendation is adopted and implemented, your committee believes that the result will be the one that is best suited to meeting Ontario's needs. Both sectors, public and private, will get what they need, but only in instances where they need it.

Furthermore, it is recommended that committees succeeding us should continue to study the subject of Notice and Comment, especially new programmes in other jurisdictions, such as the new regulatory agendas of the Canadian Government mentioned on pages 17 and 18 of this report.

APPENDIX A

ORDER OF REFERENCE

Extract from the Votes and Proceedings of the Legislative Assembly of Ontario, Friday, March 12, 1982.

On motion by Mr. Wells, seconded by Mr. Miller (Muskoka),

Ordered - That the following Standing Committee be established for this Session, with power to examine and enquire into such matters as may be referred to it by the House, with power to send for persons, papers and things, as provided in Section 35 of the Legislative Assembly Act:

The Standing Committee on Regulations and Other Statutory Instruments is appointed for this Session to be the committee provided for by section 12 of the Regulations Act, and has the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (a) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) Regulations should be expressed in precise and unambiguous language.
- (d) Regulations should not have retroactive effect unless clearly authorized by statute.
- (e) Regulations should not exclude the jurisdiction of the courts.
- (f) Regulations should not impose a fine, imprisonment or other penalty.
- (g) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like).
- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

And that the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

And that the Committee shall have the power to employ counsel and such other staff as it considers necessary.

APPENDIX B

Extract from the REGULATIONS ACT, R.S.O., 1980, c.446:

12. (1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.
- (2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.
- (3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.
- (4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.
- (5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

APPENDIX C

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Ontario

Standing Committee on Regulations and Other Statutory Instruments

Second Report 1983



3rd Session 32nd Parliament
32 Elizabeth II



LEGISLATIVE ASSEMBLY

STANDING COMMITTEE
ON REGULATIONS AND OTHER
STATUTORY INSTRUMENTS

SECOND REPORT 1983

3rd Session, 32nd Parliament

32 Elizabeth II

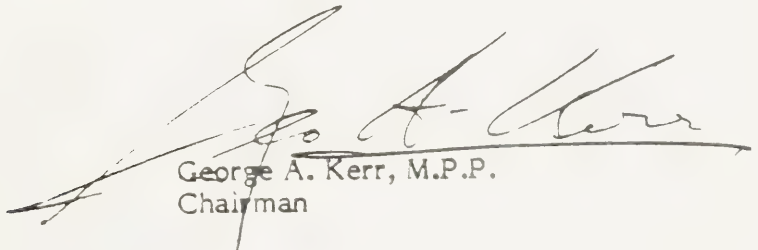


LEGISLATIVE ASSEMBLY

The Honourable John M. Turner, M.P.P.
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Regulations and Other Statutory Instruments has the honour to present its Second Report 1983 and commends it to the House.



George A. Kerr, M.P.P.
Chairman

Queen's Park
October 1983

MEMBERSHIP AND STAFF OF THE COMMITTEE

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Counsel to the Committee

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I INTRODUCTION

This is the fifteenth committee to be established under the Regulations Act since the Act was amended at the 1968-69 Session in order to provide a "watch dog" to scrutinize the delegated legislation as it appeared weekly in The Ontario Gazette. The history of these committees is recorded in the First Report 1983 which was tabled in the House on 16 February 1983.

There is no doubt in the minds of the members of the committee that its primary function is that conferred upon it by Section 12 of the Regulations Act (see page 9), namely:

"...to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes..."

Coincidental with this statutory duty, it is our purpose to report upon our examination of the regulations as often as may be practical in order to keep the House as up-to-date as possible on the manner in which the Government and its agencies are exercising the legislative powers delegated to them by the Legislature.

To this end, this report deals with the 254 regulations filed during the first four months of 1983.

II STATISTICS

As mentioned in Chapter 1, there were 254 regulations filed with the Registrar of Regulations during the first one-third of the current year.

While it may be too early to make a prediction, all factors seem to point to a substantial reduction in the number of regulations that will be filed this year - thus continuing the trend that began in 1980.

1980	1,141
1981	884
1982	857
1983	762 (estimated)

Most of the regulations dealt with in this report amend existing regulations. However, a substantial percentage are new general regulations. The third classification, revoking regulations, are few in number - only three or so to date this year.

The following table lists the Acts under which the regulations filed in January, February, March and April of this year were made:

Planning Act	36
Parkway Belt Planning and Development Act	15
Crop Insurance Act (Ontario)	14
Environmental Assessment Act	14
Game and Fish Act	13
Highway Traffic Act	13
Milk Act	7
Local Roads Boards Act	7
Education Act	6
Niagara Escarpment Planning and Development Act	5

All the rest had fewer than five. Again, the Planning Act easily led the Acts as has been the case for at least the past six years.

Complete statistics for the year 1983 with comparisons with earlier years will appear in our First Report 1984.

III REGULATIONS FILED IN JANUARY, FEBRUARY, MARCH AND APRIL, 1983

General

Counsel, acting on our instructions and on our behalf, has examined in detail each of the 254 regulations filed with the Registrar of Regulations under the Regulations Act in the period under review.

It is significant that we have found only one regulation that we feel we must bring to the attention of the House in that, in our opinion, it contains a provision that has been made without statutory authority as explained later in this report.

The committee would appear to be proving its worth as the number of regulations we find necessary to report to the House for one kind of irregularity or another continues to go down from year to year. This significant fact points to two conclusions: first of all, that the people who are involved in the preparation of regulations are watching the comments of this committee with interest and benefit, as is shown by the fact that the quality of the product of their work improves from year to year; and, secondly, the results speak well indeed of the knowledge, skill and experience of these people which we find to be of exceptional quality and improving from year to year.

In this connection, we would like to draw to the attention of the House the excellent work being done by the Cabinet Committee on Regulations in vetting all regulations before they are made to ensure that the policies involved in them are in line with Government policies and in the public interest. This procedure, which we believe can be found nowhere else than in Ontario, is a safeguard of great importance to the Legislature and the general public.

Irregular Regulation

Ministry of the Attorney General

Legal Aid Act

O. Reg. 108/83

Clause 26(1)(k) of the Legal Aid Act authorizes the Law Society of Upper Canada, subject to the approval of the Lieutenant Governor in Council, to make regulations:

"respecting the fees to be paid to barristers and solicitors for professional services under the Act or the regulations."

Regulation 108/83 now in question remakes a provision of the principal regulation and provides in subsection 105(3) of the replacement:

"The fees to be paid to barristers and solicitors for disbursements shall be calculated in accordance with Schedule 7."

The Committee is of the opinion that the attempt to treat disbursements as fees fails, and consequently it follows that subsection 105(3) is ultra vires. The statute authorizes regulations respecting fees, not fees and disbursements as it might well have done and should have done to support subsection 105(3). Our opinion is that if the subsection in question was challenged in the courts, it would fall. However, until it is found by a court of competent jurisdiction to be invalid, we believe the law to be that it is in full force and effect.

IV CONCLUSION

In chapter IV of its First Report 1983, our predecessor committee made its recommendations on the subject of Notice and Comment. The main recommendation was that the present system in Ontario should be continued but with more emphasis upon incorporating suitable Notice and Comment procedures in appropriate Acts.

It was further recommended on page 20 of that report that succeeding committees:

"...should continue to study the subject of Notice and Comment, especially new programmes in other jurisdictions, such as the new regulatory agendas of the Canadian Government..."

We, the succeeding committee, support that recommendation enthusiastically. In fact, at our first meeting we took action in the matter and are now seeking the views of all members of the Ontario Cabinet and are monitoring the Ottawa program. We will be reporting further on these developments in due course.

APPENDIX A

ORDER OF REFERENCE

Extract from the Votes and Proceedings of the Legislative Assembly of Ontario, Friday, April 22, 1983.

On motion by Mr. Wells, seconded by Mr. Gregory,

Ordered - That the following Standing Committee be established for this Session, with power to examine and enquire into such matters as may be referred to it by the House, with power to send for persons, papers and things, as provided in Section 35 of the Legislative Assembly Act:

The Standing Committee on Regulations and Other Statutory Instruments is appointed for this Session to be the committee provided for by section 12 of the Regulations Act, and has the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (a) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) Regulations should be expressed in precise and unambiguous language.
- (d) Regulations should not have retroactive effect unless clearly authorized by statute.
- (e) Regulations should not exclude the jurisdiction of the courts.
- (f) Regulations should not impose a fine, imprisonment or other penalty.
- (g) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like).
- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

And that the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

And the Committee shall have the power to employ counsel and such other staff as it considers necessary.

APPENDIX B

Extract from the REGULATIONS ACT, R.S.O., 1980, c.446:

12. (1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.
- (2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.
- (3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.
- (4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.
- (5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

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Standing Committee on Regulations and Other Statutory Instruments

Third Report 1983



3rd Session 32nd Parliament
32 Elizabeth II

STANDING COMMITTEE
ON REGULATIONS AND OTHER
STATUTORY INSTRUMENTS

THIRD REPORT 1983

3rd Session, 32nd Parliament

32 Elizabeth II

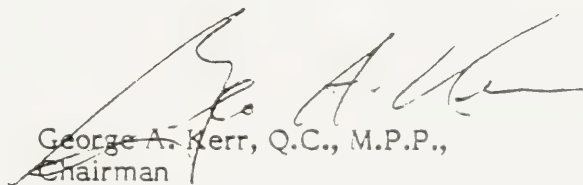


LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable John M. Turner, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Regulations and Other Statutory Instruments has
the honour to present its Third Report 1983 and commends it to the House.



George A. Kerr, Q.C., M.P.P.,
Chairman

Queen's Park
December 1983

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I INTRODUCTION

At the 1968-69 Session of the Legislature the Regulations Act was amended by adding a new section 12 (see page 28) to the Act which established this Standing Committee whose primary function is that of a "watch dog" to scrutinize all regulations coming within the purview of the Regulations Act and all other statutory instruments, such as proclamations issued pursuant to statutory authority.

In performing this basic statutory duty the Committee has established the practice of reporting to the House the results of our work as often as is practicable in order to keep the House informed on the manner in which the Government and its agencies are exercising the legislative powers delegated to them by the Legislature.

To that end this Report covers the regulations filed with the Registrar of Regulations pursuant to the Regulations Act in the middle third of the current calendar year, namely, May, June, July and August, 1983, thus following in the wake of our Second Report 1983 which covered January, February, March and April, 1983 and which was tabled in the House on October 11th last.

II STATISTICS

In the period covered by this Report there were 300 regulations filed. This compares with 298 filed in the corresponding period in 1982 and with 327 in 1981.

While it is still too early to make an accurate prediction, the facts to date seem to point to a considerable reduction in the number of regulations that will be filed in this calendar year, thus continuing the trend that began in 1980 and that we reported upon in our Second Report 1983:

1980	1,141
1981	884
1982	857
1983	762 (estimated).

There has been no change in the relative proportions, one to another, of the classes of regulations filed in the period under review. By a considerable margin, most amend existing regulations, some are new or revised general regulations, a few revoke existing regulations.

The following table lists the Acts under which five or more regulations were filed during the four month period covered by this Report.

Planning Act	58
Crop Insurance Act (Ontario)	15
Environmental Assessment Act	15
Parkway Belt Planning and Development Act	13
Highway Traffic Act	13
Farm Products Marketing Act	9
Health Insurance Act	9
Game and Fish Act	7
Small Claims Courts Act	5.

All the rest have fewer than five. Once again, many more regulations were filed under the Planning Act than under any other Act.

The Farm Products Marketing Act, the Health Insurance Act, and the Small Claims Courts Act appear on this list for the first time this year. The Milk Act, the Local Roads Boards Act, the Education Act, and the Niagara Escarpment Planning and Development Act which appeared on the similar list for the first four months of this year had fewer than five regulations in the second four month period and so do not appear on the current list.

As has been our practice, complete statistics for the calendar year 1983 with comparisons with earlier years will appear in our First Report 1984.

III REGULATIONS O. REG. 255/83 TO O. REG. 554/83 FILED IN MAY, JUNE, JULY AND AUGUST, 1983

1. General

Counsel, acting on the instructions of this Committee and on our behalf, has examined in detail each of the 300 regulations filed with the Registrar of Regulations under the Regulations Act in the period under review.

It is noteworthy that we have found only six that we feel we must bring to the attention of the House. Four of these have been brought into force retroactively without any statutory authority for so doing. One is reported in order to give the Committee an opportunity to recommend an improvement in the legislative drafting practices with respect to the use of definitions in statutes and regulations and the other gives the Committee an opportunity to criticize the practice of relying on language in statutes that is descriptive only and that does not authorize anyone to do anything.

We would again like to draw to the attention of the House the excellent work being done by the Cabinet Committee on Regulations in considering the regulations before they are made or approved by the Cabinet to ensure that the policies involved in them are in line with Government policies and are in the public interest. This procedure, which we believe to be unique, is a safeguard of great importance to the Legislature and to the general public.

Thus the people of Ontario have the advantages of dual safeguards:

(i) the Cabinet Committee checking all regulations before they are made as to policy, and (ii) this Standing Committee vetting all regulations after they are made as to vires and form and generally looking for ways to improve the Ontario system of dealing with delegated legislation.

2. Regulations Considered Irregular

The six regulations that the Committee feels it must report to the House, for one reason or another, follow, arranged alphabetically in the name of the ministry concerned.

The first four of these six regulations being reported have been brought into force retroactively without any statutory authority for doing so. It has been more than five years since the Committee has reviewed the subject of retroactivity in a report. Therefore, we feel that persons now engaged in the preparation of legislative measures may find it of interest if we discuss briefly the law respecting retroactivity in Ontario, as we deem it to be, before we deal specifically with the six regulations in question.

It is not, however, our purpose to restate the materials that can readily be found in the legal textbooks or to go into the sophisticated differences, if any, between "retrospective" and "retroactive" or to weigh the merits of the proposition that Guideline (d) should only apply where rights are affected. Our hope is to give some background and credence to the guideline which reads:

Regulations should not have retroactive effect
unless clearly authorized by statute.

It will be sufficient to serve our purpose to quote from the Report of the Royal Commission Enquiry into Civil Rights, 1968 (the McRuer Commission), Rep. No. 1, Vol. No. 1, pages 353, 354), still a highly regarded document.

Generally, statutes are not interpreted to have a retrospective operation unless they contain clear and express words to that effect, or the subject matter or content show such an intention. (Changes in mere procedure are an exception to this general rule.) The same rule applies to subordinate legislation. The parent Act will not be interpreted to authorize retrospective regulations, nor will regulations be interpreted to have retrospective operation unless both the statute and the regulations make it clear that they are intended to have retrospective effect.

Retrospective legislation is such an encroachment on civil rights that if it is to be enacted it should only be by the legislature. The power should not be delegated to any other body.

It may be that this is an appropriate place to record again (see First Report 1978) an instance where the Legislature has seen fit to put to rest any doubts as to the validity of a specific regulation by express legislative enactment. Section 3 of The Travel Industry Amendment Act, 1976 reads:

O. Reg. 491/76 shall be deemed to be valid for all purposes notwithstanding that it or any part of it would, but for this section, be invalid.

Perhaps we should add in closing these parenthetical comments that our understanding of the law is that a regulation, no matter how clearly defective it may be, is perfectly valid and subsisting for all purposes until it is held to be otherwise by a court of competent jurisdiction. It goes without saying that a regulation is not likely to be challenged in the courts on the ground that it was made retroactive without statutory authority, or on any other ground, so long as it does not adversely affect rights.

As the terms of reference of the Committee require, (see page 27) Counsel has discussed each of the regulations reported upon in this Report with the directors of the legal branches of the ministries concerned and the Chairman of the Committee has written each of the ministers inviting comment. These requirements enable the Committee to learn the viewpoints of the people responsible for the matters in question and enables these people to learn what this Committee proposes to do before this Report is finalized.

Ministry of Agriculture and Food

O. Reg. 514/83

Commodity Boards and Marketing Agencies Act

This regulation, which raises the maximum sum that the marketing agency may fix, impose and collect from milk producers, was filed with the Registrar of Regulations pursuant to the Regulations Act on August 10th, 1983.

Section 2 of the regulation provides for the regulation to come into force on August 1st, 1983.

Neither the Committee nor the Ministry can find any statutory authority for the ten day retroactive effect. It follows that Guideline (d) has been breached. An official of the Ministry has explained that the late filing was due to an inadvertent delay in the processing of the regulation in the Ministry.

Ministry of the Attorney General

O. Reg. 450/83, Provincial Court (Civil Division) Act

O. Reg. 451/83, Small Claims Courts Act

These regulations, which deal respectively with the rules of the Provincial Court (Civil Division) and the tariff of fees of the Small Claims Courts, were filed with the Registrar of Regulations pursuant to the Regulations Act on July 13th, 1983.

Section 2 in each of these two regulations provides for them to come into force on July 1st, 1983.

It follows that these two regulations were retroactive for almost two weeks for which neither this Committee nor the officials of the Ministry can find any statutory authority.

It follows that Guideline (d) has been contravened. The Committee has learned that these contraventions were caused by inadvertent delays in the Ministry.

Ministry of Community and Social Services

O. Reg. 298/83

Day Nurseries Act

This regulation, which amends a number of provisions of the principal regulation, was filed on May 17th, 1983. Section 5 of the regulation provides that the regulation "shall be deemed to have come into force on the 1st day of April, 1983."

However, neither the Committee nor the officials of the Ministry is able to find any statutory authority for this retroactive commencement of approximately one month and a half. We must therefore conclude that Guideline (d) has been breached.

The Committee has learned that the Ministry proposes to replace the regulation in question with a fresh regulation in the near future and so remove the irregularity.

Ministry of Consumer and Commercial Relations

O. Reg. 500/83

Pension Benefits Act

In listing this regulation in this Report we must hasten to state that there is nothing irregular in it under current standards. However, it gives the Committee an opportunity to raise a criticism that was dealt with as far back as the Committee's First Report in 1978, which we fear has gone unheeded. It concerns an area in the drafting practices currently in vogue in Ontario that is confused and without a desirable degree of consistency and uniformity of standards.

Section 1 of O. Reg. 500/83, an amending regulation, adds a number of definitions to section 1 of the principal regulation. This raises the question: Where is the statutory authority for making these definitions? There appears to be none. This leads to the further question: Is any specific authority necessary? Probably the answer is "no", as it has been generally accepted for many years to be implied that in preparing regulations one may include definitions of words and expressions used in the regulation without any express authority in the Act for doing so.

However that may be, Clause 38(1)(q) of the Pension Benefits Act reads:

The Lieutenant Governor in Council may make regulations,

(q) defining "defined benefit pension plan" and "bridging supplement" for the purposes of this Act and the regulations

and so some doubt is raised as to the ability to make any other definitions because of the maxim of interpretation of statutes that "the mention of one or more is the exclusion of any others."

At this point we feel we can do no better than to quote from Chapter VI of the Committee's First Report 1978:

The Committee's examination of the Ontario regulations generally and the respective statutes under which they have been made has led us to focus our attention upon the form of the authority under which expressions are defined for the purposes of the regulations.

First of all, is any statutory authority necessary to enable expressions to be defined in the regulations for the purposes of the regulations?

There are numerous examples where no express authority exists and there is no record of anyone questioning the practice. For examples, see O. Reg. 416/77 under The Environmental Assessment Act, 1975 and O. Reg. 579/75 under The Provincial Tax Act. We are advised that statutory authority is unnecessary as a matter of law; or putting the point more exactly, we are advised that there is no law on the point.

However that may be, we have found many examples where express authority is given. The variations are great.

The General Welfare Assistance Act, s.11(s):

"The Lieutenant Governor in Council may make regulations, ... (s) defining expressions for the purposes of the regulations;"

Section 29(3) of The Elevators and Lifts Act and section 60(3) of The Theatres Act have identical provisions:

"Any word or expression used in this Act or the regulations may be defined in the regulations for the purposes of the regulations."

This formula is also employed in other Acts such as The Beef Cattle Marketing Act and The Farm Products Grades and Sales Act except that the word "regulations" is used in the singular. It may be fair to assume that provisions of this kind are unnecessary and are perhaps put in a statute out of an abundance of caution. They are in our view redundancies, but they do serve to make the intent of the Legislature perfectly clear.

A slightly different approach is made in The Summary Convictions Act:

"7(3) The Lieutenant Governor in Council may make regulations, ... (b) defining any word or expression used in the regulations."

and in The Loggers Safety Act:

"15(2) ... the Lieutenant Governor in Council may make regulations, ... (a) defining any expression used in this Act;"

then, strangely enough, The Shoreline Property Assistance Act, 1973, takes another tack:

"14. The Lieutenant Governor in Council may make regulations for the purposes of this Act, (a) ... defining any word or expression not defined in this Act;"

A different approach is to be found in The Venture Investment Corporations Registration Act, 1977:

"34. The Lieutenant Governor in Council may make regulations, ... (g) defining any word or expression used in this Act that has not already been expressly defined in this Act."

This formula in a slightly more elaborate form is illustrated by section 41(2) of Bill 70 of the current Session, The Occupational Health and Safety Act, 1978:

"(2) The Lieutenant Governor in Council may make regulations, defining any word or expression used in this Act or the regulations that is not only defined in this Act for the purposes of the Act and the regulations;"

Then there is a common formula, wide in scope and simple in its terms, that is illustrated in section 42(2) of The Retail Sales Tax Act. It reads:

"The Lieutenant Governor in Council may make regulations, ... (d) defining any expression used in the Act or the regulations."

In The Consumer Protection Act care was taken to limit the authority (the reason for this limitation is not readily seen). Section 49(n) reads:

"The Lieutenant Governor in Council may make regulations, ... (n) defining any expression used in Part II or Part III of this Act."

The above examples taken at random are sufficient we believe to illustrate the diversity of form and scope in this field.

Whether or not it would be worthwhile to make a study in greater depth is doubtful; the Committee simply wishes to draw the attention of those concerned to the complex mass of formulas used.

As a separate but related point, we are strongly of the view that every Act should delimit its scope with reasonable certainty, leaving the operative field of regulations under the Act to make relatively small additions to or subtractions from the central theme of the Act.

One example of where this principle has been neglected is to be found in The Municipal Health Services Act. Section 17(b) reads:

"Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations which may be general or particular in their application, ... (b) defining 'municipal health services' and ...".

Here the Legislature is in effect saying that it wishes to legislate with respect to municipal health services but admits it does not know the field to be covered well enough and so leaves the whole business to be dealt with later by way of regulations. Surely this is not good parliamentary practice.

We therefore recommend that expressions used in a statute, especially basic, key expressions, be defined in the Act itself, if they require to be defined at all, and not left to the regulations whose proper function is to supplement, not lead.

The Committee hopes that by bringing this matter to the attention of the House again, some clarification of the drafting practices may result by the adoption of rules of thumb that would eliminate the situation brought into focus by section 1 of O. Reg. 500/83.

Therefore, the Committee endorses the recommendation of our predecessor and emphasizes the desirability of action among those engaged in the preparation of legislative measures.

Ministry of Government Services

O. Reg. 502/83

Public Service Superannuation Act

This regulation amends the principal regulation which designates five organizations for the purposes of subsections 29(2) and (3) of the Act. This amending regulation adds the Ontario Energy Corporation to the list of designated organizations.

It follows that the Committee's criticism of the amending regulation applies equally well to the principal regulation. Both have been made under the authority of language that is descriptive only and that, technically speaking, does not authorize anybody to do anything.

The only authority the Committee can find for these regulations is in Clause (d) of 29(2) of the Act which reads in part:

Where a contributor ... becomes a member of,

(d) the staff of

(i)

(ii)

(iii)

that is designated by the Lieutenant Governor in Council, a sum of money shall be paid out ...

Clause (d) of 29(3) of the Act has a similar provision.

This criticism has been the subject of comment in earlier reports of this Committee. We believe that it would be helpful at this time to quote from our First Report 1980.

As your Committee pointed out in earlier reports (First Report 1978 at pages 43-45 and the First Report 1978 at page 30), the practice is much too prevalent of relying upon statutory language that is, in the opinion of this Committee, descriptive only as authority for the making of regulations. Instances of this kind continue to occur with the result that it is possible the regulations in question might be found to be ultra vires if challenged in the courts. One example of this questionable practice follows.

O. Reg. 703/79. The Corporation Securities Registration Act

Section 2 of this regulation authorizes certain officials in the Ministry of Consumer and Commercial Relations to sign certain certificates in place of the Minister.

Your Committee can find no certain authority for this delegation. Presumably subsection 10(3) of the Act, as re-enacted by S.O. 1971 (Second Session), Chapter 8, section 1(2), was relied upon. In our opinion the language is descriptive only. It reads: "and shall be signed by (the Minister) or by such officer of the (Ministry) as is designated by the Lieutenant Governor in Council by regulation."

On the other hand, legal counsel in the Ministry take the view that the Committee has taken a too grammatical interpretation of the language of the statute and that in any reasonable interpretation of the legislation the intent is clear to authorize the delegated effected by the regulation.

This may well be. Nevertheless, the doubt persists and in the view of the Committee ought to be put to rest.

The Committee takes this opportunity to endorse and emphasize its earlier views in the hope that the persons presently engaged in the preparation of statutes will take heed.

In concluding this chapter, the Committee wishes to emphasize the point with respect to retroactivity that more care should be taken by officials concerned with the preparation and processing of regulations to ensure that adequate time is provided between the making of a regulation and its filing to ensure that it will come into force on the day intended without any retroactivity unless, of course, a retroactive effect is intended and authorized by statute.

IV NOTICE AND COMMENT

After studying the subject known generally as Notice and Comment for some time and in some detail, the Committee's First Report 1983 recommended that the present system in Ontario should be continued but with greater emphasis upon incorporating suitable Notice and Comment procedures in appropriate statutes.

It was further recommended that the Committee should continue to study the subject of Notice and Comment, especially new programs in other jurisdictions, such as the recently inaugurated Regulatory Agendas program of the Government of Canada.

In implementation of these recommendations the Chairman of the Committee has written the members of the Government requesting their views on the Committee's recommendations. The response to date has been gratifying but more time is required before any final conclusions can be drawn. Suffice it to say that while a number of the ministers have expressed a desire to study the matter further, the replies in hand are overwhelmingly in support of the Committee's recommendations.

In connection with the Committee's continuing interest in Notice and Comment is our continuing observation of the Government of Canada's Regulatory Agendas program. This is an early warning system of changes in its regulations so that the private sector and government departments can be made aware of these proposals and have an opportunity of participating in the process.

For a two-year test period (1983 and 1984) notice of proposed amendments in the regulations and of new regulations is being published in May and November. The first of these Regulatory Agendas dated May 1983 was titled "Supplement to the Canada Gazette of Saturday, May 28, 1983." It contains 548 pages. Copies of these publications are available to members of the House and others in the Office of the Clerk of this Committee and in the Legislative Library.

It should be noted that some federal departments have made arrangements to have their Regulatory Agendas printed separately.

The May issue contains an introduction that explains the concept of Regulatory Agendas followed by the agendas of 10 federal departments from Agriculture to Transport and four regulatory federal agencies: Atomic Energy Control Board, Canadian Radio-television and Telecommunications Commission, Canadian Transport Commission and the National Energy Board.

V POWERS OF ENTRY

The Committee has from time to time been critical of the Legislature when it has delegated authority to prescribe the powers of officials. For example, see Second Report 1980, page 11; First Report 1981, page 6. Over the years we have had the opinion that the powers of governmental officials, such as inspectors, to enter premises should not be made by any delegated authority by way of a regulation but should be laid down by the Legislature itself and appear in the Act.

Recently the Ontario Law Reform Commission has published a report on Powers of Entry which is of interest to this Committee.

At this time we can do no better than to quote from the Commission's report without comment. Commencing on page 57 (footnotes omitted), the report reads:

In our view, it would be a very salutary measure if provisions were developed by regulation to control further the details of the manner of exercise of powers of entry under particular statutes: for example, regulations could be made to establish times and places for inspections, to specify notice provisions, and to detail the nature of the required identification and the content of an adequate record. This would serve to define and structure the discretionary power of subordinate officials, which would reduce the risk of abusive behaviour.

Because the exercise of powers of entry inevitably interferes with individual rights we believe that there should be political accountability for regulations bearing upon this matter. Given the impact of these powers, we believe political responsibility for regulations should be borne by the Lieutenant Governor in Council, rather than by the Minister responsible for the administration of the Act under which the power of entry is given. Accordingly, we recommend that an Act by or under which a power of entry is given should be deemed to authorize the Lieutenant Governor in Council to make regulations governing the manner in which the powers of entry must be exercised and reported.

Under the Regulations Act, all regulations stand permanently referred to the Standing Committee of the Legislative Assembly on Regulations for the purposes of section 12(3). The scope of this review, however, is limited, as section 12(3) provides as follows:

12 (3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are

referred to it from time to time by the Assembly.

The Standing Committee is under a further duty to report to the Legislative Assembly of Ontario its observations, opinions and recommendations.

Regulations that are made pursuant to the proposed Powers of Entry Act by the Lieutenant Governor in Council would, like all other regulations, be referred to the Standing Committee for examination. However, because these regulations deal with the exercise of powers of entry, and involve an inherent danger of abuse, we are of the view that the Standing Committee should be particularly vigilant to ascertain whether the regulations conform to the intention and the objective of the statute under which the power of entry is conferred. Under the terms of reference established in the Regulations Act, a review of this nature would appear to be foreclosed, as the Standing Committee is instructed to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power "but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes ...". To overcome this limitation, we recommend that the proposed Powers of Entry Act should provide that, when a regulation is referred to the Standing Committee of the Legislative Assembly on Regulations, the Committee may, notwithstanding section 12(3) of the Regulations Act, review all aspects of the regulation, including matters of substance and policy respecting the use of powers of entry for the purposes of the regulation and enabling statute.

Where regulations are made regarding powers of entry, they would assist courts in determining whether the proposed reasonableness standard has been observed. We anticipate that courts might examine these provisions in much the same manner as, in tort law, custom is examined in determining negligence. Custom, while not constituting an absolute standard against which conduct is evaluated, serves as guidance to the courts in establishing a standard of care.

Finally, regulations bearing upon powers of entry would be relevant in a judicial determination of the reasonableness of a particular search or seizure that might be subject to scrutiny under section 8 of the Canadian Charter of Rights and Freedoms. Regulations, however, would not be determinative of the reasonableness of the practice: to the extent that they would have the effect of limiting the right to be secure against unreasonable search or seizure, they must, under section 1 of the Charter, constitute "such reasonable limits ... as can be demonstrably justified in a free and democratic society" in order to be valid. A court could therefore find that the regulations constitute unreasonable limits on the legal right enunciated in section 8 of the Charter.

Attached to the Commission's report is Appendix 1 which is a Draft Bill entitled "An Act to provide Standards in the Exercise of Powers of Entry". Relevant provisions follow:

1. In this Act,

- (c) "power of entry" means the authority, express or implied, given by or under an Act to enter, search, inspect or seize, or do any act in or respecting a place or thing in the possession of another without his consent, whether with or without a warrant;

9. (1) An Act, by or under which a power of entry is given shall be deemed to authorize the Lieutenant Governor in Council to make regulations governing the manner in which the powers of entry must be exercised and reported.

(2) When a regulation made under subsection (1) is referred to the Standing Committee of the Legislative Assembly on Regulations, the Committee may, notwithstanding subsection 12(3) of the Regulations Act, review all aspects of the regulation, including matters of substance and policy respecting the use of powers of entry for the purposes of the regulation and enabling statute.

VI SECOND COMMONWEALTH CONFERENCE ON DELEGATED LEGISLATION

The first of these conferences was held at Canberra, Australia in September, 1980.

The second was held at Ottawa, Canada in April, 1983. Twenty-seven Commonwealth jurisdictions were represented at this Conference by seventy-five delegates.

The Conference has now provided three volumes of material totalling 442 pages: Volume 1, Report of the Conference; Volume 2, Documents of the Conference; Volume 3, Transcript of Proceedings. Copies of these books are available in the Office of the Clerk of this Committee and in the Legislative Library.

The time and place of the next conference is undecided; the decision has been left to a continuing coordinating Commonwealth Delegated Legislation Committee composed of seven elected members, representing various areas of the Commonwealth. The delegates, however, appeared to favour late 1985 or early 1986.

It was resolved by the Conference:

1. That a continuing coordinating Commonwealth Delegated Legislation Committee (hereinafter called "the Committee") be re-appointed by the Plenary Session having as its major purposes
 - a) The sponsorship and arrangement of further Conferences
 - b) Preparation of a Commonwealth study of prevailing practices and precedents in the interpretation and drafting of enabling powers and of delegated legislation.
 - c) Providing assistance and advice to any legislature proposing to develop scrutiny of delegated legislation and any new committees formed in such legislature.
2. The Committee shall consist of one representative to be appointed by the Parliamentary jurisdictions represented at this Conference (delegates exercising one vote for each jurisdiction) from the following areas:
 - a) United Kingdom and Europe
 - b) Asia
 - c) Africa
 - d) Australasia and the Pacific
 - e) Americas (excluding the Caribbean)
 - f) the Caribbean

and the immediate past chairman of the Committee shall also be an ex-officio member of the Committee. Members of the Committee shall be entitled from time to time to appoint proxies and alternates to represent them at further meetings of the Committee in the host jurisdiction or any other place where a meeting is to be held.

3. The Committee shall appoint its own Chairman.
4. In the event of a future Conference being held in a jurisdiction which has no member representing it on the Committee, the host jurisdiction shall appoint an additional member of the Committee to represent it.
5. The next Conference will be held at a time and place to be determined by the Committee after enquiries as to the availability of jurisdictions to offer to host the Conference.
6. Until the determination of the name of the next host jurisdiction, the Conference accepts the offer of the Australian Senate to continue to produce bulletins and to provide secretarial services which will thereafter be transferred to the host jurisdiction.
7. The incoming Committee shall make immediate arrangements for the proposed Commonwealth study of prevailing practices and precedents in the interpretation and drafting of enabling powers and of delegated legislation and for its circulation among member bodies.
8. The Conference authorizes Mr. Graham Eglington to prepare and circulate a report and revised transcript of this Conference.
9. The Conference records its indebtedness to the Canadian Organizing Committee, to the CPA and to all associated with the splendid organization of this Conference.

In its discussions on the adoption of Conference Resolutions it became clear that there was general agreement on the following propositions:

1. There is a need for greater awareness on the part of the Commonwealth Committee of what is actually going on in individual Commonwealth countries. There is also a need for the active contribution of advice and assistance to those jurisdictions commencing scrutiny or trying to improve their existing procedures. The Commonwealth Committee should devise and develop the ways in which this is to be done. Fact finding missions were suggested by some delegates to supplement written communication through the Commonwealth Delegated Legislation Secretariat (which will continue to operate from Canberra through the good offices of the Australian Senate, at least until a host country is selected for the next Conference).
2. There would be considerable benefit in arranging regional conferences which would allow for more concentrated study of relevant problems and for the participation of jurisdictions whose financial restraints militate against extensive travel to a Commonwealth-wide Conference held half a world away.

3. Future conferences should pay particular heed to the problems of small and developing jurisdictions, and to the forging of effective weapons for parliamentary supervision in uni-cameral legislatures.
4. There is a need to discuss matters under political heads rather than to concentrate on political issues under administrative law and procedural heads. What should be brought into the open is the value and danger of partisan politics in controlling delegated legislation and the proposal of procedural measures which will minimize the danger and maximize the advantage of the basic reality of political life.

The First Conference produced the Commonwealth Delegated Legislation Committee, a Secretariat, and the excellent Commonwealth Delegated Legislation Bulletin. The Second Conference has called for the Commonwealth study of procedures, precedents and practices. It has highlighted not just existing difficulties, but new and potential problems and situations which will bear watching. Finally, it has laid the groundwork for the rendering of informed assistance by Commonwealth legislatures, one to another.

APPENDIX A

ORDER OF REFERENCE

Extract from the Votes and Proceedings of the Legislative Assembly of Ontario, Friday, April 22, 1983.

On motion by Mr. Wells, seconded by Mr. Gregory,

Ordered - That the following Standing Committee be established for this Session, with power to examine and enquire into such matters as may be referred to it by the House, with power to send for persons, papers and things, as provided in Section 35 of the Legislative Assembly Act:

The Standing Committee on Regulations and Other Statutory Instruments is appointed for this Session to be the committee provided for by section 12 of the Regulations Act, and has the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (a) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) Regulations should be expressed in precise and unambiguous language.
- (d) Regulations should not have retroactive effect unless clearly authorized by statute.
- (e) Regulations should not exclude the jurisdiction of the courts.
- (f) Regulations should not impose a fine, imprisonment or other penalty.
- (g) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like).
- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

And that the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

And the Committee shall have the power to employ counsel and such other staff as it considers necessary.

APPENDIX B

Extract from the REGULATIONS ACT, R.S.O., 1980, c.446:

12. (1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.
- (2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.
- (3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.
- (4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.
- (5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.



Standing Committee on Regulations and Other Statutory Instruments

First Report 1984



4th Session 32nd Parliament
32 Elizabeth II

STANDING COMMITTEE
ON REGULATIONS AND OTHER
STATUTORY INSTRUMENTS

FIRST REPORT 1984

4th Session, 32nd Parliament
32 Elizabeth II



LEGISLATIVE ASSEMBLY

The Honourable John M. Turner, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Regulations and Other Statutory Instruments has
the honour to present its First Report 1984 and commends it to the House.

A handwritten signature in cursive script that reads "Howard Sheppard".

Howard Sheppard, M.P.P.,
Chairman.

Queen's Park
June, 1984

MEMBERSHIP AND STAFF
OF THE COMMITTEE

HOWARD SHEPPARD

Chairman

PHIL GILLIES

Vice-Chairman

DON COUSENS

ODOARDO DI SANTO

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ALAN M. ROBINSON

RONALD G. VAN HORNE

ANDREW RICHARDSON

Clerk of the Committee

LACHLAN R. MacTAVISH, Q.C.

Counsel to the Committee

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I INTRODUCTION

This Report has two purposes: first, to inform the House of the Committee's findings with respect to the 261 regulations filed with the Registrar of Regulations pursuant to the Regulations Act during the last four-month period of last year. The second is to record the statistics of the regulations filed during the whole of 1983 in order that comparisons may be made with earlier years.

In addition, highlights of the Committee's recent activities are being reported.

As we have pointed out in some of our earlier reports, there is no doubt in the minds of the members of the Committee that its most important duty is stated in section 12 of the Regulations Act (see page 15 of this report):

"Every regulation ... stands permanently referred to the Regulations Committee" which "shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes..."

The Committee is satisfied that it is discharging its principle function of examining the regulations and reporting to the House thereon as expeditiously as circumstances permit.

II STATISTICS 1983

During the calendar year 1983 there were 815 regulations filed with the Registrar of Regulations pursuant to the requirements of the Regulations Act. The following table presents the totals for the past seven years:

1977	975
1978	1,007
1979	962
1980	1,141
1981	884
1982	837
1983	815.

The striking feature of these figures is that each of the last three years has shown a considerable drop over the previous years, with 1983 having more than 300 less than 1980. The Committee is pleased to note this significant trend for which we hesitate to specify a cause and for which we do not make any prediction for the future.

Of the 815 regulations filed last year, perhaps 75% amended existing regulations, 20% were new regulations and the remaining 5% revoked existing regulations. These percentages correspond roughly with other years.

The 1983 regulations occupy 2,245 double-column pages in The Ontario Gazette. The following table will enable comparisons to be made with other years:

1977	1,797
1978	1,965
1979	2,568
1980	2,138
1981	1,952
1982	2,021
1983	2,245.

Although a substantial reduction in the number of regulations filed in recent years has occurred, a corresponding reduction in the number of pages occupied by the regulations in The Ontario Gazette has not followed. This result may be explained in part by the fact that in 1983 the total would have been some 700 pages less without two items: the OHIP schedule of fees and tables under the Health Insurance Act and the Building Code Regulation under the Building Code Act.

The following table lists the seven Acts under each of whose authority more than 20 regulations were filed in 1983 as compared with the previous years for which we have statistics:

	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
Planning Act	309	263	208	238	157	190	130
Highway Traffic Act	79	88	92	82	78	71	49
Environmental Assessment Act							41
Parkway Belt Planning and Development Act	57	67	56	37	41	36	41
Crop Insurance Act (Ontario)	37	37	18	39	28	36	40
Game and Fish Act	17	23	25	50	32	30	27
Health Insurance Act	25	31	34	50	31	29	21

It is to be noted that the old Planning Act was superseded on August 1st, 1983 by a revised version, the Planning Act, 1983. Eleven of the 130 regulations filed in 1983 were made under the new Act, the rest under the old Act.

The only newcomer to this list is the Environmental Assessment Act and the only Act that has appeared on earlier lists of the same kind but not on the current list is the Milk Act.

More detailed statistical information may be found in the "Table of Regulations Filed Under the Regulations Act to the 31st Day of December, 1983", prepared by the Registrar of Regulations and published as an addendum to The Ontario Gazette annually in February.

Of the 815 regulations filed in 1983, the Committee has reported to the House only 15.

One of these was made without any statutory authority, 13 were made to take effect retroactively without any statutory authority for so doing, one was made under the authority of statutory language that was, technically or grammatically speaking, descriptive only, and one was reported, not for any irregularity but to point out an area of drafting practice - definitions in acts and regulations - that is in need of improvement. Details may be found in the Second Report 1983, the Third Report 1983, and in Chapter III of this report.

III REGULATIONS FILED IN SEPTEMBER, OCTOBER,
NOVEMBER, DECEMBER, 1983
O. REG. 555/83 TO O. REG. 815/83

1. General

On the instructions of the Committee and on its behalf, Counsel has examined in detail the 261 regulations filed with the Registrar of Regulations pursuant to the Regulations Act in the last four months of 1983.

It may be of interest to repeat here, particularly for the new members of the Committee, the method of examination that Counsel has developed with the approval of the Committee.

- First: The form, style and language of the regulation in hand is examined for clarity of expression.
- Second: If the regulation amends an earlier regulation (as most do), the parent regulation and all amending regulations are checked.
- Third: The statute under the authority of which the regulation was made and all relevant amendments of the Act are examined in a search for the specific statutory provision that authorizes the regulation.
- Fourth: The nine basic principles that have been adopted by the House (see page 14 of this Report) as guidelines to be observed by those engaged in the preparation and processing of regulations are then checked to ensure that they have been followed.
- Fifth: The findings of Counsel are then recorded and reported by him to the Committee with his recommendations.

As the Terms of Reference of the Committee require (see page 14), and in accordance with our practice, the Chairman of the Committee has written each of the Ministers of the Ministries responsible for the statutes under which the regulations reported to the House in this report, pointing out the Committee's views and inviting comment. In addition, our Counsel has

discussed the matters in question with the directors of the legal branches of the Ministries concerned. In these ways, the Committee is able to learn the points of view of those responsible and gives these officials an opportunity of learning the Committee's opinions before this report is finalized, thus minimizing the possibility of unfair criticisms.

As usual, each of the eight regulations reported in this report appear under the name of the Ministry responsible to the House for the Act under which the regulation was made, arranged alphabetically, followed in the heading by the name of the Act under which the regulation was made and then followed in turn by the filing number of the regulation.

2. Regulations Reported

MINISTRY OF AGRICULTURE AND FOOD

Commodity Boards and Marketing Agencies Act O. Reg. 713/84

This regulation, which authorizes an increase in the maximum sum per dozen eggs that a marketing agency may impose upon egg producers, was filed with the Registrar of Regulations on November 8th, 1983. Section 2 provides for the regulation to come into force on November 6th, 1983. There is no statutory authority for this two-day retroactive period.

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

General Welfare Assistance Act O. Reg. 657/83

This regulation, which for the most part, deals with how "assistance" is determined for the purposes of the Act, was filed with the Registrar of Regulations on October 11th, 1983. Section 3 provides for it to come into force on October 1st, 1983. There is no statutory authority for the 10-day retroactive period.

General Welfare Assistance Act
O. Reg. 691/83

This regulation, which makes numerous amendments to the General Regulation of an up-dating nature, was filed with the Registrar of Regulations on October 27th, 1983. Section 7 provides that it shall be deemed to have come into force on October 1st, 1983. There is no statutory authority for the retroactive period of almost four weeks.

Family Benefits Act
O. Reg. 690/83

This regulation, which makes a number of amendments to the General Regulation of an up-dating nature, was filed with the Registrar of Regulations on October 27th, 1983. Section 9 provides that it shall be deemed to have come into force on October 1st, 1983. There is no statutory authority for the retroactive period of almost four weeks.

Ministry of Community and Social Services Act
O. Reg. 709/83

This regulation, which increases the maximum number of members of the Social Assistance Review Board established under the Act, was filed with the Registrar of Regulations on November 4th, 1983. It provides that it is to have effect "on and after the 1st day of October, 1983". There is no statutory authority for the retroactive period of more than a month.

MINISTRY OF CONSUMER AND COMMERCIAL RELATIONS

Operating Engineers Act
O. Reg. 639/83

This regulation, which makes a number of amendments to the General Regulation, including a remaking of the Schedule of Fees and 10 Forms,

was filed with the Registrar of Regulations on October 3rd, 1983. Section 7 provides for Section 5, the section that remakes the Schedule of Fees, to come into force on October 1st, 1983. There is no authority for the retroactive period of two days.

Boilers and Pressure Vessels Act
O. Reg. 640/83

This regulation, which amends the General Regulation by remaking the Tariff of Fees payable under the Act, was filed with the Registrar of Regulations on October 3rd, 1983. Section 2 provides for it to come into force on October 1st, 1983. There is no authority for the retroactive period of two days.

MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING

Housing Development Act
O. Reg. 780/83

This regulation, which provides for loans to handicapped persons to assist in the modification of their dwellings, was filed with the Registrar of Regulations on December 14th, 1983. Section 3 provides that it shall be deemed to have come into force on June 1st, 1982. There is no statutory authority for the retroactive period of more than a year and a half.

3. Comment on Retroactivity

It will be noted that all eight regulations brought to the attention of the House in this report (and indeed 13 of the total of 15 of the 1983 regulations reported) were considered by the Committee to be irregular for the same reason: all were made retroactive in effect without any statutory authority for doing so.

Perhaps it may be helpful to those concerned with this situation for us to refer them to the Committee's comments on the subject in earlier reports: see First Report 1978, pages 32 to 38 and, more recently, Third Report 1983, pages 9 and 10.

The Committee can, of course, do no more than report its findings, comments and recommendations to the House from time to time. It has no mandate or power to take any remedial action or impose sanctions of any kind.

While it is realized that, in practical terms, a certain amount of retroactivity in delegated legislation is unavoidable, having regard to the nature of governmental administrative practices, and that so long as rights and interests are not affected adversely by unauthorized retroactive action, the Committee believes that there is little to be concerned about.

The Committee is of the opinion and so recommends that the law on the subject and the supporting guidelines should remain as they are. However, we wish to add and emphasize this important caveat: that the officials involved in the preparation and processing of delegated legislation should take greater cognizance of the law and the guidelines than has been the case in recent years and so keep the number of instances of unauthorized delegated legislation to an absolute minimum.

If greater efforts to comply with the relevant standards were to be made by those concerned, we believe the number of unauthorized retroactive regulations would be substantially reduced.

IV NOTICE AND COMMENT

On January 18th last the Committee held a special meeting in preparation for our meeting in Ottawa on the following day with the co-chairmen and officials of the Standing Joint Committee on Regulations and Other Statutory Instruments of the Senate and House of Commons of Canada. Counsel's memorandum of 9 January 1984 was the subject of the discussion. It was an initiation paper for the new members of the Committee; it dealt with the principle functions of the Committee and in some detail, Notice and Comment, which was to be the chief topic of discussion in Ottawa.

The Federal-Ontario meeting convened in a Senate committee room, Senator John Godfrey presiding, joined later by the Honourable Perrin Beatty, M.P.

Mr. Godfrey led the discussion, bringing the Ontario members up-to-date on the situation in Parliament on delegated legislation generally and, more particularly, Notice and Comment.

He was followed by a presentation in detail by Mr. Eric Milliken, Counsel from the Treasury Board of Canada, on the federal government's current provisional program on what are termed Regulatory Agendas, which our Committee has been following with interest since it was announced by the Honourable Herb Gray, President of the Treasury Board, in January of last year.

This "early warning system" of regulatory agendas may be considered to be a form of, or an addition to, other forms of Notice and Comment. Under it, federal departments and agencies are required to give notice of proposed or intended regulatory initiatives in an official publication.

These agendas are designed to give both the public and the private sectors notice of proposed regulations before final decisions are taken and while it is possible to consider alterations, it is hoped this procedure will stimulate constructive input and so lead to more effective and less burdensome and expensive regulations.

While lengthy agendas were published last May and November by ten federal departments and four agencies in supplements to the Canada Gazette (and the same program is expected to be followed this year), the Committee is of the opinion that it is too early to make an assessment as to the merits or the value of the system. Suffice it to say now that some criticism has already appeared in some quarters.

Perhaps the future of the program on regulatory agendas will be determined at the end of the two-year trial period by the answer to the question: do its advantages outweigh its cost?

V PARLIAMENTARY CONTROL OF
DELEGATED LEGISLATION IN QUEBEC

The Committee notes with interest the work being done in the National Assembly of Quebec on parliamentary control of delegated legislation.

Unlike all the other provinces of Canada, Quebec has not enacted any statute on the subject. The only provision to be found is in its Legislation Act which requires the publication in the Quebec official gazette of such documents and announcements as the Lieutenant Governor in Council may specify.

However, in 1982, the National Assembly set up a committee of nine of its members, complete with a staff, known as the Study Committee on Parliamentary Control of Delegated Legislation.

This Committee reported back to the Assembly in July 1983 with a comprehensive report of 216 pages which envisages legislation setting of a central filing system for all regulations coming within the scope of the legislation and requiring them to be published - similar in principle to that of Ontario and other provinces. Of equal importance is the recommendation that would provide for control mechanisms for scrutinizing and reviewing the validity and the merits of regulations.

A recent check indicates that the report is being studied by the government and a bill is being prepared.

VI CHARTER OF RIGHTS AND FREEDOMS

In concluding this report, the Committee wishes to draw the attention of the House and everyone involved with the legislative process to what is a new and most important consideration in the preparation and interpretation of all Acts, regulations and other statutory instruments, namely, the impact of the Canadian Charter of Rights and Freedoms.

The Supreme Court of Canada has recently begun delivering judgments on the scope and meaning of the Charter - interpretative work that will continue as long as the Charter stands. Gradually, the Supreme Court cases will form a mosaic from which it will be possible to develop guidelines which, hopefully, may be helpful in ensuring that the products of the legislative process are in accord with the Charter as interpreted by the Court.

Therefore this Committee has the additional duty in performing its statutory function as the watchdog of the Legislature to ensure that the regulations that come to it for examination do not contravene the law of the Charter as well as to ensure that they do not contravene the authority under which they were made and that they comply with the guidelines approved by the House (see page 14 of this report).

APPENDIX A

ORDER OF REFERENCE

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- (a) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) Regulations should be expressed in precise and unambiguous language.
- (d) Regulations should not have retroactive effect unless clearly authorized by statute.
- (e) Regulations should not exclude the jurisdiction of the courts.
- (f) Regulations should not impose a fine, imprisonment or other penalty.
- (g) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like).
- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

And the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

And the Committee shall have power to employ counsel and such other staff as it considers necessary.

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Extract from the REGULATIONS ACT, R.S.O., 1980, c.446:

12. (1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.
- (2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.
- (3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.
- (4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.
- (5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

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Standing Committee on Regulations and Other Statutory Instruments

Second Report 1984



4th Session 32nd Parliament
33 Elizabeth II

STANDING COMMITTEE
ON REGULATIONS AND OTHER
STATUTORY INSTRUMENTS

SECOND REPORT 1984

4th Session, 32nd Parliament
33 Elizabeth II



LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable John M. Turner, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Regulations and Other Statutory Instruments has
the honour to present its Second Report 1984 and commends it to the House.

A handwritten signature in cursive script that reads "Howard N Sheppard".

Howard Sheppard, M.P.P.,
Chairman.

Queen's Park
October, 1984

MEMBERSHIP AND STAFF
OF THE COMMITTEE

HOWARD SHEPPARD

Chairman

PHIL GILLIES

Vice-Chairman

DON COUSENS

ODOARDO DI SANTO

MICKEY HENNESSY

WILLIAM HODGSON

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JOHN SWEENEY

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ANDREW RICHARDSON

Clerk of the Committee

LACHLAN R. MacTAVISH, Q.C.

Counsel to the Committee

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I INTRODUCTION

At the 1968-69 Session the Regulations Act was amended by adding a section providing for the establishment of this Committee. This provision is set out as Appendix B on page 22 of this Report. In part it reads:

"At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed... to examine the regulations with particular reference to the scope and method of the exercise of delegated Legislative power but without reference to the merits of the policy or objectives to be affected by the regulations or enabling statutes."

In pursuance of this statutory "watch dog" function the Committee, through its Counsel, has examined the 272 regulations filed during the months of January, February, March and April of this year and is commenting in this Report upon the 12 regulations that it has found to be irregular for one reason or another.

The Committee is quite aware that outside the House our constituency is pretty much limited to the officials of the Government, particularly the lawyers in the office of the Legislative Counsel and the Registrar of Regulations and in the legal branches of the ministries and agencies who are concerned with the preparation and processing of regulations. In these circumstances we feel it may be helpful and of interest to these people to draw to their attention, from time to time items that deal with developments in the field of delegated legislation. Some of these follow.

Delegated Legislation in Canada

The Faculty of Law of the University of Western Ontario has announced the preparation of a treatise entitled "Delegated Legislation in Canada" by Professor Denys C. Holland and a graduate student, John McGowan.

The book will cover the senior jurisdictions in Canada - the first comprehensive study of its kind.

The authors have sought and received advice from our Counsel on numerous points in the preliminary drafts, particularly those pertaining to Ontario, including the history and work of this Committee. We are pleased to have been asked to co-operate in this project and welcome the addition to the literature on the increasingly important subject of regulations and other forms of secondary legislation.

We are saddened by recent word that Professor Holland died suddenly this summer while on vacation in Europe but we are heartened to learn that work on the book will be continued.

Designated Legislation and the Lords: A Question of Rights

J. E. Grey, the Clerk Assistant in the House of Lords at Westminster, has written this article in The Parliamentarian of July, 1983 in which he describes the present procedures in the United Kingdom Parliament designed to protect the rights of individuals against executive action through delegated legislation.

While the operating methods of the Parliament of the United Kingdom and the Legislature of Ontario have little in common, each appears to have established an effective delegated legislation review procedure. Mr. Grey's five and one-half page thumb-nail sketch is an up-to-date summary of an individual's rights against the government's executive actions by way of delegated legislation.

Parliamentary Control of Delegated Legislation: An Australian Perspective

This informative article by the Clerk Assistant of the Australian Senate appears in The Parliamentarian for October, 1983. In it the author makes, for us at least, the provocative statement that the Parliaments of most Commonwealth countries have progressed further than that of Canada in establishing a system to control delegated legislation. It is noted that the statement is unsupported.

Australia: Victorian Subordinate Legislation

The Australian Law Journal (Vol. 58, May, 1984, Page 245) contains an article which illustrates the fact that great concern prevails in that part of the world on a subject that has been and is of interest in federal and provincial circles in Canada, namely, Notice and Comment.

In December, 1983 the Parliament of Victoria referred a Bill called the Subordinate Legislation (Delegation) Bill to its Constitutional Committee for inquiry and report.

The Bill is designed to deal with two perennial problems: the first being the lack of effective democratic controls over the formation of regulations; and the second, the stultification of business and citizens daily lives through bureaucratic intrusion by way of superfluous or unnecessary regulations.

The Committee will watch with interest for the report and recommendations of this Victorian Committee.

* * *

II STATISTICS

During the four-month period covered by this Report there were 232 regulations filed with the Registrar of Regulations under the Regulations Act.

While it is yet too early to come to any accurate conclusion, the results to date indicate a continuation of the trend that we reported earlier (Third Report 1983, Page 6). It appears that there will again be a reduction in the number of regulations in 1984 compared with earlier years. Here are the figures:

1980	1,141
1981	884
1982	857
1983	815
1984	800 (estimated)

Again we can report that there has been no change in the relative proportions, one to another, of the classes of regulations filed. By a considerable margin, most of the regulations amend existing regulations, some are new or revise general regulations, a few revoke regulations.

The following table lists the Acts under the authority of which five or more regulations were filed in the four-month period covered in this Report and also those of the same period last year.

	<u>Jan.</u> <u>1983</u>	<u>Feb.</u> <u>1984</u>	<u>Mar.</u> <u>1984</u>	<u>Apr.</u>
Planning Act	36		30	
Highway Traffic Act	13		20	
Crop Insurance Act (Ontario)	14		11	
Milk Act	7		11	
Health Protection and Promotion Act, 1983			9	
Environmental Assessment Act	14		9	
Education Act	6		7	
Health Insurance Act	9		7	
Game and Fish Act	13		6	

In the corresponding list last year, the Parkway Belt Planning and Development Act appeared with 15, the Local Roads Boards Act with 7, and the Niagara Escarpment Planning and Development Act with 5 (Second Report, Page 2).

Complete statistics for 1984 with similar comparisons will appear in our First Report 1985.

For the convenience of those who may wish to refer to the earlier reports of this Committee we list our 16 reports since the present series began.

1978	First Report (55 pp.)	Presented to the House June 15, 1978. Considered by the House November 20, 1978.
	Second Report (14 pp.)	Presented to the House December 14, 1978.
1979	First Report (35 pp.)	Presented to the House June 21, 1979. Remarks of the Chairman.
	Second Report (17 pp.)	Presented to the House December 13, 1979. Debate on Adoption. Carried.
1980	First Report (12 pp.)	Presented to the House June 5, 1980.
	Second Report (22 pp.)	Presented to the House December 11, 1980. Remarks of the Chairman.
1981	First Report (26 pp.)	Presented to the House June 16, 1981. Remarks of the Chairman. Debate on Adoption. Carried October 22, 1981.
	Second Report (7 pp.)	Presented to the House December 15, 1981.
1982	First Report (11 pp.)	Presented to the House May 3, 1982.
	Second Report (9 pp.)	Presented to the House July 7, 1982.
	Third Report (11 pp.)	Presented to the House December 14, 1982.
1983	First Report (23 pp.)	Presented to the House February 16, 1983.
	Second Report (7 pp.)	Presented to the House October 11, 1983.
	Third Report (23 pp.)	Presented to the House December 15, 1983.
1984	First Report (15 pp.)	Presented to the House June 19, 1984.
	Second Report (22 pp.)	Presented to the House October, 1984.

III REGULATIONS REPORTED

On the instructions of the Committee and on its behalf, Counsel has examined in detail the 272 regulations filed with the Registrar of Regulations pursuant to the Regulations Act in the period covered by this Report, namely, the first four months of the current year.

All the usual and required procedures have been followed by the Chairman and Counsel with respect to the regulations that the Committee is of the opinion are irregular for one reason or another.

As usual, each of the regulations reported appear under the name of the Ministry responsible to the House for the Act under which the regulation was made, arranged alphabetically, followed in the heading by the name of the Act under which the regulation was made and then followed by the citation of the regulation.

Of the 12 regulations reported, seven are reported for unauthorized retroactivity, four for lack of statutory authority and one because of a drafting error.

MINISTRY OF THE ATTORNEY GENERAL

Administration of Justice Act

O. Reg. 36/84

O. Reg. 37/84

The first of these two regulations fixes the fees to be paid to court reporters and court monitors (court electronic equipment operators) for attendances and services requested by officials of the Ministry of the Attorney General. The second revokes a provision which prescribes certain fees payable to reporters in the United Family Court.

Both of these regulations were filed on January 24th, 1984. Section 2 of each provides for it to come into force on January 16th, 1984.

The Committee can find no authority in the Act or elsewhere for the retroactivity.

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

Family Benefits Act

O. Reg. 216/84

This regulation makes a number of amendments to the parent regulation and to earlier amending regulations to the parent regulation respecting certain benefits and how they are to be computed.

It was filed on April 4th, 1984. Section 8 provides for it to come into force on April 1st, 1984.

We can find no authority in the Act or elsewhere for the period of retroactivity.

General Welfare Assistance Act

O. Reg. 214/84

This regulation amends the parent regulation and a number of earlier amending regulations respecting eligibility for assistance and the computation of assistance in certain cases.

It was filed on April 4th, 1984. Section 3 provides for it to come into force on April 1st, 1984.

We can find no authority in the Act or elsewhere for the period of retroactivity.

Vocational Rehabilitation Services Act
O. Reg. 215/84

This regulation revoked the definitions of "dependant" and "income" in the parent regulation.

It was filed on April 4th, 1984. Section 2 provides for it to come into force on April 1st, 1984.

We can find no authority in the Act or elsewhere for the period of retroactivity.

MINISTRY OF HEALTH

Health Disciplines Act
O. Reg. 107/84

This regulation makes a number of amendments to Parcost C.D.I., including an increase in the prescription fee.

It was filed on February 17th, 1984. Section 3 provided that it shall be deemed to have come into force on February 1st, 1984.

We can find no authority in the Act or elsewhere for the period of retroactivity.

Health Disciplines Act
O. Reg. 172/84

This regulation, like O. Reg. 107/84, made a number of amendments to Parcost C.D.I.

It was filed on March 22nd, 1984. Section 12 provided that it shall be deemed to have come into force on February 1st, 1984.

We can find no authority in the Act or elsewhere for the period of retroactivity.

MINISTRY OF INDUSTRY AND TRADE

Development Corporations Act
O. Reg. 113/84

Section 5 of the Act reads:

"The Lieutenant Governor in Council may by regulation constitute corporations with such powers and duties as are considered conducive to the attainment of the objects of the corporation and provide for its constitution and management."

Pursuant to this authority the Lieutenant Governor in Council constituted the Ontario International Corporation. Section 18 of the constituting regulation provides:

"The Ontario International Corporation terminates on the first day of June, 1983, or on such day thereafter the Lieutenant Governor in Council may designate."

This was followed by a number of regulations each of which substituted a later date for the termination of the Corporation. The latest of these is the regulation at hand; it provides for the Corporation to terminate on March 1st, 1989.

The question in the mind of the Committee is: Has the Lieutenant Governor in Council had, at any time, any authority to terminate the Corporation?

The question is posed by reason of the fact that the statute is clear and explicit in section 5 as to what powers it is delegating: the Lieutenant Governor in Council may by regulation: 1) constitute the Corporation, 2) give it such powers and duties as are considered conducive to the attainment of the objects of the Corporation, 3) provide for its constitution and management. Nothing more. If it had been intended by the Legislature to confer the power of termination, it would have been easy to have said so; it did not.

The doubt in the mind of the Committee is substantial; it is not shared by the Ministry which is of the opinion that there is adequate authority for the making of the regulation.

However, the Committee believes that where a doubt exists anywhere, it is simply good sense to remove it.

MINISTRY OF LABOUR

Hospital Labour Disputes Arbitration Act O. Reg. 174/84

This regulation fixes the maximum remuneration of chairmen and members of boards of arbitration.

Section 20 of the Act reads:

"The Lieutenant Governor in Council may make regulations,
(b) providing for and fixing the remuneration
and expenses of chairmen and members of
boards of arbitration."

The Committee is of the opinion that fixing the maximum remuneration is not fixing the remuneration. If our opinion is correct, the regulation is ultra vires and if it should be challenged in the courts (which we acknowledge as most unlikely) it might well be struck down.

Labour Relations Act O. Reg. 175/84

The situation here is exactly the same as in O. Reg. 174/84. Our conclusion is the same.

We do not believe the regulation has done what the statute has authorized.

MINISTRY OF NATURAL RESOURCESPublic Lands ActO. Reg. 208/84

This regulation provides for a permit system under which non-residents may camp on certain Crown lands in certain circumstances.

The Committee has perused the Public Lands Act very carefully but we have not been able to find any provision that would authorize the Lieutenant Governor in Council to make O. Reg. 208/84.

Section 4 of the Act might be contended by some to contain in general terms power to make the regulation in question. It reads:

"The Lieutenant Governor in Council may make such regulations as the Lieutenant Governor in Council considers necessary to carry out the provisions of this Act, or to meet cases for which no provision is made by this Act."

We do not agree with such a contention. In our opinion the very general powers of section 4 must be interpreted as being confined to matters supplemental to subjects already dealt with in the Act. Camping is not one of them.

If we are correct in our view of the way in which section 4 must be interpreted and applied, then it follows that the regulation in question is ultra vires. If it were to be attacked in a court of competent jurisdiction it might well be found to be invalid and of no effect.

MINISTRY OF THE SOLICITOR GENERALPolice ActO. Reg. 74/84

This regulation deals with a number of police matters. Section 8 remakes subsection 56 (1) of the parent regulation. Both the parent regulation and the regulation now in question contain, in the opinion of the Committee, a drafting error that should not be allowed to pass without comment.

The provision reads in part:

"Where a constable or other police officer is suspended or charged with a contravention of an Act of the Parliament of Canada or of the Legislative Assembly of the Province of Ontario..."

It is common knowledge, of course, that the Legislative Assembly does not make laws. Laws are made by the Legislature of Ontario, composed of the Lieutenant Governor and the Legislative Assembly. This is clear from section 69 of the Constitution Act, 1867 (formerly the British North America Act, 1867); it reads:

"There shall be a Legislature of Ontario consisting of the Lieutenant Governor and of one House styled the Legislative Assembly of Ontario."

* * *

IV RETROACTIVITY: SHOULD THE APPLICATION OF THE RULE BE NARROWED?

The rule that we will consider in this chapter can be simply expressed: Regulations should not have retroactive effect unless clearly authorized by statute.

This rule has been contravened with respect to Ontario regulations so often without harm to anyone that the Committee is beginning to wonder whether it would be desirable to narrow the scope of the rule.

For example, in the years 1982 and 1983 there were 2,556 regulations filed and examined by us. Of that total we reported twenty-eight to the House and of those twenty-eight, twenty were reported for breaching the rule we are considering.

The question we will pose is: Should the rule be amended in whatever way may be necessary to make it clear that a regulation may be valid and effective retroactively without statutory authority so long as its purpose and effect is to confer a benefit or so long as it does not derogate from established rights.

An exception of this kind is, in fact, recognized under the present law by some authorities. However, the Committee is unable to find any legal support for such an exception, but in order to present the case as thoroughly and fairly as we can we will review the law in some detail.

The principle enunciated in the rule as stated above was considered by the Royal Commission of Inquiry into Civil Rights. The commissioner, the Honourable J. C. McRuer, formerly Chief Justice of the High Court of Justice of Ontario handed down a report in 1968 that is still respected and accepted as authoritative. In Report No. 1, Vol. No. 1 at page 353 Mr. McRuer said:

"Generally, statutes are not interpreted to have a retrospective operation unless they contain clear and express words to that effect, or the subject matter or context show such an intention. (Changes in mere procedure are an exception to this general rule.) The same rule applies to subordinate legislation. The parent Act will not be interpreted to authorize retrospective regulations, nor will regulations be interpreted to have retrospective operation unless both the statute and the regulation make it clear that they are intended to have retrospective effect.

Retrospective legislation is such an encroachment on civil rights that if it is to be enacted it should only be enacted by the Legislature. The power should not be delegated to any other body."

It is to be noted that when the Legislature intends a regulation to have retroactive effect it says so expressly. A great many examples of this can be found in the statute books. A few examples will suffice: The Cemetaries Act authorizes the making of regulations exempting cemetaries from certain provisions of the Act and provides that "every such regulation may have a retroactive effect". The Corporations Act, the Land Speculation Tax Act, the Land Transfer Tax Act and the Ontario Guaranteed Annual Income Act each provides, "a regulation (meaning a regulation made under the Act) is, if it so provides, effective with reference to a period before it was filed."

There are a great many more examples of this kind.

Having regard to the number of times the principle in question has been violated with impunity over the years, this Committee has sought means by which to emphasize the principle and bring it more forcibly to the attention of the ministries and agencies of the Government in the hope that contraventions might be minimized. To this end the Committee in its First Report 1978 recommended to the House that the guidelines recommended in the McRuer Report be adopted. This recommendation was acted upon and the guidelines were incorporated in the Terms of Reference of this Committee on March 14th, 1980. Clause (d) of the Guidelines reads:

"Regulations should not have retrospective effect unless clearly authorized by statute."

This guideline also appears in corresponding provisions in other jurisdictions, including those of the Standing Joint Committee on Regulations and Other Statutory Instruments of the Parliament of Canada. (See the Votes and Proceedings of the House of Commons for February 8th, 1978 at page 347, the effect of which is that the Committee will report to Parliament any regulation that "purports to have retroactive effect where the enabling statute confers no express authority so to provide..."). A similar provision is to be found in the Terms of Reference of the similar joint committee of the Parliament at Westminster (See page 3 of its First Special Report ordered to be printed by the House of Commons and House of Lords on January 18th, 1978). Under this order the committee is required to consider every regulation with a view to determining whether the special attention of the House should be drawn to it on any of the following grounds -

- (iii) That it purports to have retrospective effect where the parent statute confers no express authority so to provide.

It is somewhat surprising to find very little in the case law dealing with this subject. However, what little there is appears to support the rule as we understand it.

In the *Dominion Chain* case (1974 3 O. R. (2d) 481) Lerner J. at page 500 wrote: "As a general rule, statutes do not have retrospective effect unless such construction is clear or arises by necessary implication." He also states that "this rule is so frequently quoted with approval that it now enjoys almost judicial authority." He then adds the qualification mentioned by McRuer, that is, that the rule applies only to substantive law and not to purely procedural matters.

A later case worth noting here is *Re Teperman and City of Toronto et al*, (1975, 5 O.R. (2d) 507). In it Henry J. stated at page 515: "The general rule is that a statute does not...destroy or impair prior existing rights unless it so provides expressly or by necessary intendment. This was supported on appeal (1975, 7 O.R. (2d) 533) where Jessup J.A. said that in his view Teperman's right was an acquired or crystallized right and was one which accordingly survived subsequent legislation in the absence in that legislation of express words or necessary implication for a retrospective effect.

In our consideration of this matter and, we believe, in the textbook and case law the words "retrospective" and "retroactive" have been used interchangeably as synonyms and without regard to the recent sophisticated discussions among some experts who give different meanings to them.

We will now consider the purpose of this chapter, namely, to discuss the argument one hears from time to time that the rule does or should not apply to cases where the regulation confers a benefit and does not impose a liability or curtail or extinguish an existing right. Putting the point another way, that the rule does or should apply only in cases where there is no statutory authority in the Act or elsewhere to authorize a retroactive effect and (a) where the regulation takes away or impairs a vested right acquired under any existing law or (b) where it creates a new obligation or adversely affects an existing obligation, imposes a new duty or adversely affects an existing duty or attaches a new disability or adversely affects an existing disability in respect of transactions or considerations already in place.

Suffice it to say that in the opinion of this Committee there is no case law, statute or House order at the present time to support such an exception and that, if we are correct, our duty is to proceed as we have been doing and apply the law and Guideline (d) as it now is. If the Legislature should wish to make an exception to the rule it can do so very easily by an appropriate amendment or the House may do so by amending Guideline (d).

We think it may be helpful to quote two paragraphs from page 9 of our First Report 1984:

"While it is realized that, in practical terms, a certain amount of retroactivity in delegated legislation is unavoidable, having regard to the nature of governmental administrative practices, and that so long as rights and interests are not affected adversely by unauthorized retroactive action, the Committee believes that there is little to be concerned about.

The Committee is of the opinion and so recommends that the law on the subject and the supporting guidelines should remain as they are. However, we wish to add and emphasize this important caveat: that the officials involved in the preparation and processing of delegated legislation should take greater cognizance of the law and the guideline than has been the case in recent years and so keep the number of instances of unauthorized delegated legislation to an absolute minimum."

In concluding this chapter we wish to give a warning: any softening of the rule would, we feel certain, lead to many more instances of regulations being filed without statutory authority for retroactive commencement. Too often reliance would be put upon the exception to justify late filing and so be an encouragement to careless administrative practices.

* * *

V CONCLUSION

In concluding this Report the Committee would be remiss if it did not bring to the attention of the House the fact that William R. Anderson, Q.C. has retired after having served the Government of Ontario in several legal capacities since 1958: first with the then Department of Lands and Forests, then with the Department of Agriculture and Food and finally in the office of the Legislative Council as Registrar of Regulations for some twenty years.

Mr. Anderson has shown to have had in an unusually large measure the qualities stated by Carelton Kent Allan in his book "Law and Orders":

"The art of draftsmanship consists of a sense of the use of language, together with a knowledge of the technical interpretations which are placed by law on certain forms of language. The first of these requirements can be supplied only by a natural gift, which has not necessarily anything to do with legal attainments. It is a rare gift; again and again it is to be observed how few people have the knack of expressing rules and regulations in clear, tidy and unambiguous language - and, indeed, in our mother-tongue it is an exceedingly difficult thing to do. The second requirement can be satisfied only by technical knowledge and experience in a very wide and complex field."

Mr. Anderson has been succeeded by his Deputy, Mr. Sidney Tucker, Q.C., an experienced legislative counsel.

* * *

APPENDIX A

ORDER OF REFERENCE

Extract from the Votes and Proceedings of the Legislative Assembly of Ontario, Friday, April 22, 1983.

On motion by Mr. Wells, seconded by Mr. Gregory,

Ordered - That the following Standing Committee be established for this Session, with power to examine and inquire into such matters as may be referred to it by the House, with power to send for persons, papers and things, as provided in Section 35 of the Legislative Assembly Act:

The Standing Committee on Regulations and Other Statutory Instruments is appointed for this Session to be the committee provided for by section 12 of the Regulations Act, and has the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (a) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) Regulations should be expressed in precise and unambiguous language.
- (d) Regulations should not have retroactive effect unless clearly authorized by statute.
- (e) Regulations should not exclude the jurisdiction of the courts.
- (f) Regulations should not impose a fine, imprisonment or other penalty.
- (g) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like).
- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

And the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

And the Committee shall have power to employ counsel and such other staff as it considers necessary.

* * *

APPENDIX B

Extract from the REGULATIONS ACT, R.S.O., 1980, c. 446:

12. (1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.
- (2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.
- (3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.
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- (5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

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GOVERNMENT OF
ONTARIO



Standing Committee on Regulations and Other Statutory Instruments



Third Report 1984

4th Session 32nd Parliament
33 Elizabeth II

STANDING COMMITTEE
ON REGULATIONS AND OTHER
STATUTORY INSTRUMENTS

THIRD REPORT 1984

4th Session, 32nd Parliament
33 Elizabeth II



LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable John M. Turner, M.P.P.
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Regulations and Other Statutory Instruments has the honour to present its Third Report 1984 and commends it to the House.

Howard Sheppard

Howard Sheppard, M.P.P.
Chairman

Queen's Park
November, 1984

MEMBERSHIP AND STAFF
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Counsel to the Committee

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B. Regulations Act, s.12	9

I INTRODUCTION

It will be recalled that at the 1968-69 Session of the Legislature the Regulations Act was amended by adding a section providing for the establishment of this Committee and laying down its basic duties. This provision is set out as Appendix B on page 9 of this Report. In part it reads:

"At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed... to examine the regulations with particular reference to the scope and method of the exercise of delegated Legislative power but without reference to the merits of the policy or objectives to be affected by the regulations or enabling statutes."

In pursuance of this statutory "watch dog" function the Committee, through its Counsel, has examined in detail the 299 regulations (O. Reg. 273/84 to O. Reg. 571/84) filed during the months of May, June, July and August of this year. It is now reporting upon the eight regulations that, in its opinion, are irregular.

As we are required to do by our Terms of Reference (see page 7 of this Report), each of the regulations that appear to us to be irregular has been discussed by our Counsel with the Director of the Legal Branch of the Ministry concerned and the Chairman of the Committee has written each Minister concerned advising him of our views and inviting his comments.

* * *

II STATISTICS

During the four-month period covered by this Report, that is, during May, June, July and August, 1984, there were 299 regulations filed with the Registrar of Regulations under the provisions of the Regulations Act. This compares with 232 filed in the first four months of this year.

These 299 regulations filed in the period under review occupy 752 double-column pages of The Ontario Gazette compared with 994 pages for the previous four-month period.

The following table lists the Acts under the authority of which five or more regulations were filed during May, June, July and August of this year. Also listed are the similar Acts for the first four-month period of this year.

	1984			
	<u>Jan. Feb.</u>		<u>May June</u>	
	<u>Mar. Apr.</u>		<u>July Aug.</u>	
Planning Act	30		39	
Highway Traffic Act	20		28	
Crop Insurance Act (Ontario)	11		23	
Health Insurance Act	7		13	
Health Protection and Promotion Act	9		-	
Parkway Belt Planning and Development Act	-		13	
Environmental Assessment Act	9		10	
Game and Fish Act	6		9	
Farm Income Stabilization Act	-		6	
Education Act	7		5	
Milk Act	11		5	

As usual, complete statistics for 1984 with the usual comparisons will appear in our First Report 1985 which we will present to the House as early as possible in 1985.

III REGULATIONS REPORTED

On the instructions of the Committee and on its behalf, Counsel has examined in detail the 299 regulations filed with the Registrar of Regulations during the period covered by this Report.

Of the eight regulations reported, seven are reported for unauthorized retroactivity and one for lack of statutory authority.

As has become our practice, each of the regulations reported appear under the name of the Ministry responsible to the House for the Act under which the regulation was made, arranged alphabetically, followed in the heading by the name of the Act under which the regulation was made and then followed by the citation of the regulation.

CHAIRMAN OF THE MANAGEMENT BOARD OF CABINET

Public Service Act

O. Reg. 431/84

Sections 86 to 94 of the parent regulation (Reg. 881 of the R.R.O. 1980) deal with separation pay and payments upon death. O. Reg. 431/84 provides that this group of sections does not apply to deputy ministers and those of equal status.

The regulation in question was filed on July 3rd, 1984 and was expressed to have come into force on April 1st, 1984.

The Committee is unable to find in the Act or elsewhere any authority for making the regulation retroactive for a period of almost three months.

MINISTRY OF AGRICULTURE AND FOOD

Commodity Boards and Marketing Agencies Act

O. Reg. 512/84

This regulation authorizes an increase in the grants under the Act from \$33 to \$36. It was filed on August 10th, 1984 and it provided for it to have come into force on August 1st, 1984.

The Committee is unable to find any authority anywhere for making the regulation retroactive.

It is noted that a similar situation occurred a year ago with respect to O. Reg. 514/83.

Oleomargarine Act

O. Reg. 295/84

This regulation makes a number of amendments to the parent regulation (Reg. 696 of R.R.O. 1980). The Committee is concerned with section 4 of O. Reg. 295/84 which simplifies the report that an analyst who analyses a sample of margarine must make to the chief inspector under the Act.

The Committee is unable to find any authority for this provision which in effect changes the duties of these analysts. The same criticism can be made about the corresponding provision in the parent regulation (subsection 10(5)).

It is noted that clause 16(d) of the Act authorizes the Lieutenant Governor in Council to make regulations prescribing the power and duties of inspectors. One would expect to find a similar provision for analysts. There is none.

In the opinion of the Committee it could be found by a court that the provision in question was made without any statutory authority and that therefore it is invalid.

This criticism falls within the principle of the Committee that where doubt exists as to the vires of a provision, it is simply wise to remove the doubt.

MINISTRY OF THE ATTORNEY GENERAL

Administration of Justice Act

O. Reg. 366/84

This regulation prescribes the fees for certain investigations under the Matrimonial Causes Act and the Children's Law Reform Act.

It was filed on June 7th, 1984 and it provided for it to come into force on June 1st, 1984.

The Committee can find no authority in the Act or elsewhere for the retroactive period of one week.

Commissioners for Taking Affidavits Act

O. Reg. 368/84

This regulation increases the fees payable by commissioners under the Act.

It was filed on June 7th, 1984 and it provided for it to come into force on June 1st, 1984.

We can find no authority in the Act or elsewhere for the regulation to come into force retroactively.

Notaries Act

O. Reg. 367/84

This regulation increases the fee payable for commissions as notaries public.

It was filed on June 7th, 1984 and it provided for it to come into force on June 1st, 1984.

We can find no authority in the Act or elsewhere for the retroactive period of one week.

Small Claims Courts Act

O. Reg. 392/84

This regulation increases from \$12 to \$13 per hour the fee payable to referees for services under the Act. It was filed on June 19th, 1984 and it provided for it to come into force on June 1st, 1984.

The Committee can find no authority for the retroactive period of nearly three weeks.

MINISTRY OF COMMUNITY AND SOCIAL SERVICES

Family Benefits Act

O. Reg. 312/84

The purpose of this regulation is to increase the daily amount of one of the items used in computing allowances under the Act.

The regulation was filed on May 15th, 1984. Section 2 provides for it to come into force on May 1st, 1984.

The Committee can find no authority in the Act or elsewhere for dating back the commencement of the regulation for a period of two weeks.

APPENDIX A

ORDER OF REFERENCE

Extract from the Votes and Proceedings of the Legislative Assembly of Ontario, Friday, April 22, 1983.

On motion by Mr. Wells, seconded by Mr. Gregory,

Ordered - That the following Standing Committee be established for this Session, with power to examine and inquire into such matters as may be referred to it by the House, with power to send for persons, papers and things, as provided in Section 35 of the Legislative Assembly Act:

The Standing Committee on Regulations and Other Statutory Instruments is appointed for this Session to be the committee provided for by section 12 of the Regulations Act, and has the terms of reference as set out in that section, namely: to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:

- (a) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
- (c) Regulations should be expressed in precise and unambiguous language.
- (d) Regulations should not have retroactive effect unless clearly authorized by statute.
- (e) Regulations should not exclude the jurisdiction of the courts.
- (f) Regulations should not impose a fine, imprisonment or other penalty.
- (g) Regulations should not shift the onus of proof of innocence to a person accused of an offence.
- (h) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like).
- (i) General powers should not be used to establish a judicial tribunal or an administrative tribunal.

And the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 12(3) of the Regulations Act, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

And the Committee shall have power to employ counsel and such other staff as it considers necessary.

* * *

APPENDIX B

Extract from the REGULATIONS ACT, R.S.O., 1980, c. 446:

12. (1) At the commencement of each session of the Legislature a standing committee of the Assembly shall be appointed, to be known as the Standing Committee on Regulations, with authority to sit during the session.
- (2) Every regulation stands permanently referred to the Standing Committee on Regulations for the purposes of subsection 3.
- (3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.
- (4) The Standing Committee on Regulations may examine any member of the Executive Council or any public servant designated by any such member respecting any regulation made under an Act that is under his administration.
- (5) The Standing Committee on Regulations shall from time to time, report to the Assembly its observations, opinions and recommendations.

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